

United States
Court of Appeals
for the Ninth Circuit.

FARMERS INSURANCE EXCHANGE, Also
Known as FARMERS AUTOMOBILE
INTER INSURANCE EXCHANGE,

Appellant,

vs.

LOUISE K. HOLM,

Appellee.

Transcript of Record

Appeal from the United States District Court,
for the District of Oregon.

FILED
MAY 11 1951
JAMES H. O'BRIEN
CLERK

United States
Court of Appeals
for the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

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In the United States District Court
for the District of Oregon
Civil No. 5251

LOUISE K. HOLM,

Plaintiff,

vs.

FARMERS INSURANCE EXCHANGE, Also
Known as FARMERS AUTOMOBILE IN-
TER INSURANCE EXCHANGE,

Defendant.

PETITION FOR REMOVAL

Farmers Insurance Exchange for the purpose of presenting this petition shows that heretofore and on or about the 9th day of January, 1950, Louise K. Holm, as plaintiff, brought this action against Farmers Insurance Exchange as defendant in the Circuit Court of the State of Oregon for the County of Multnomah.

Farmers Insurance Exchange at the time of the commencement of said action was and now is a reciprocal inter-insurance exchange created and existing under and by virtue of the laws of the State of California, and at all of said times was and now is a citizen and resident of that state and a non-resident of the State of Oregon.

Plaintiff Louise K. Holm at the time of the commencement of said action, ever since has been and now is a citizen, resident and inhabitant of the State of Oregon, and is not a citizen, resident or inhabitant of the State of California.

This action is one of a civil nature in which there is a controversy between citizens of different states, and the amount in controversy, exclusive of interests and costs, exceeds the sum of \$3,000.00.

Attached hereto as Exhibit "A" and "B" respectively are copies of summons and complaint served upon Farmers Insurance Exchange in said action in said Circuit Court.

KOERNER, YOUNG, SWETT
& McCOLLOCH,
CLARENCE J. YOUNG,

/s/ JOHN GORDON GEARIN,
Attorneys for Defendant.

State of Oregon,
County of Multnomah—ss.

I, John Gordon Gearin, being first duly sworn, depose and say that I am one of attorneys for Farmers Insurance Exchange, defendant in the above-entitled action and that the foregoing petition for removal is true as I verily believe.

/s/ JOHN GORDON GEARIN.

Subscribed and sworn to before me this 26th day of January, 1950.

[Seal] /s/ MABEL H. COOK,
Notary Public for Oregon.

My Commission expires: Dec. 26, 1953.

Exhibit "A"

In the Circuit Court of the State of Oregon for
the County of Multnomah

LOUISE K. HOLM,

Plaintiff,

vs.

FARMERS INSURANCE EXCHANGE, Also
Known as FARMERS AUTOMOBILE IN-
TER INSURANCE EXCHANGE,

Defendant.

SUMMONS

To Farmers Insurance Exchange, also known as
Farmers Automobile Inter Insurance Exchange
Defendant.

In the Name of the State of Oregon: You are hereby required to appear and answer the Complaint filed against you in the above-entitled cause within ten days from the date of service of this Summons upon you, if served within this County; or if served within any other County of this State, then within twenty days from the date of the service of this Summons upon you; and if you fail so to answer, for want thereof, the Plaintiff will take judgment against you for the sum of \$10,000.00, together with the additional sum of \$708.45, together with the additional sum of \$64.95, as costs, together with interest thereon at the rate of 6% per annum from the 2nd day of November, 1949,

until paid, together with the additional sum of \$5,000.00 as reasonable attorney's fees herein.

/s/ NATHAN WEINSTEIN,
Attorney for Plaintiff.

Exhibit "B"

In the Circuit Court of the State of Oregon
for the County of Multnomah
No.

LOUISE K. HOLM,

Plaintiff,

vs.

FARMERS INSURANCE EXCHANGE, Also
Known as FARMERS AUTOMOBILE IN-
TER INSURANCE EXCHANGE,

Defendant.

COMPLAINT

Comes now the plaintiff and for cause of action against the defendant complains and alleges as follows:

I.

That defendant is an insurance exchange company duly organized and existing under and by virtue of the laws of the State of California and duly licensed to do business in the State of Oregon under and by virtue of Sections 101-1301 to 1316 inclusive O.C.L.A. and was known as, prior to May 1, 1947, the Farmers Automobile Inter Insurance Exchange and that the said Farmers Insurance Exchange is

engaged in the general liability indemnity insurance business in the State of Oregon.

II.

That on the 27th day of May, 1938, the defendant did solicit and sell to one A. Von Borstel a certain automobile liability insurance policy being Farmers Automobile Inter Insurance Exchange policy #2098402, a copy of which policy is hereto attached marked "Exhibit A" and by this reference made a part of this complaint as though fully set forth herein.

III.

That on the 11th day of May, 1942, the said Farmers Insurance Exchange did issue an endorsement on the said policy which transferred the coverage thereon from a certain 1936 Plymouth sedan to a certain 1940 Plymouth sedan, bearing serial #10983736, motor #P10-185961, copy of which endorsement is hereto attached marked "Exhibit B" and by this reference made a part hereof as though fully set forth herein.

IV.

That the said policy has at all time herein mentioned been in full force and effect.

V.

That on about the 29th day of June, 1948, the said A. Von Borstel did give and transfer to one Helen L. Sondenaa, his daughter, the said 1940 Plymouth automobile and did at that time transfer to his daughter, the said Helen L. Sondenaa, the

insurance contract hereinabove referred to and hereto attached, marked "Exhibit A".

VI.

That prior to the time of the transfer of the said automobile and the said insurance policy from the said A. Von Borstel to the said Helen L. Sondenaa, the said A. Von Borstel approached the defendant herein and advised the said defendant that the said automobile was being transferred to the said Helen L. Sondenaa and that at that said time and place the said A. Von Borstel requested that the consent of the defendant be given to the said assignment of the said policy, at which time and place the said A. Von Borstel was advised by the said defendant that in view of the fact that the automobile was to remain in the family and that transfer was being made to a close relative of the said A. Von Borstel, to wit: his daughter, that no formal assignment was required and that the consent of the defendant to any assignment was not required and that the said A. Von Borstel and his said daughter and persons driving the said automobile with the consent and permission of the said A. Von Borstel or his daughter, Helen L. Sondenaa, would be protected under the terms and provisions of the said policy.

VII.

That relying upon the statement made by defendant to the said A. Von Borstel the consent of the defendant to the assignment of the insurance policy was not obtained although the defendant had full

knowledge of the transfer of the automobile and the assignment of the policy.

VIII.

That on the 3rd day of October, 1948, the plaintiff herein was injured on the Mt. Hood Loop Highway in Multnomah County, Oregon, by the automobile described in the endorsement hereto attached, marked "Exhibit B" and insured by the insurance policy hereto attached, marked "Exhibit A," which said automobile at said time and place was operated by Elmer N. Sondenaar with the consent and permission and at the request of the said Helen L. Sondenaar and that thereafter, on the 2nd day of November, 1949, in the Circuit Court of the State of Oregon for the County of Multnomah in a case entitled "Louise Holm, plaintiff vs. Elmer N. Sondenaar et al." being #185-807, the plaintiff herein recovered judgment against the said Elmer N. Sondenaar for the sum of \$12,000, together with the additional sum of \$708.45 special damages, and the sum of \$64.95, costs and disbursements, which said judgment was entered in the said cause and which said judgment has not been paid nor has any part thereof been paid. That thereafter executions were issued against the property of the said Elmer N. Sondenaar and that the same have been returned nulla bone and that more than thirty days have passed since the rendition of the said judgment and that neither the same nor any part thereof has been paid.

IX.

That forthwith after the happening of the said accident on the 3rd day of October, 1948, Helen L. Sondenaa and Elmer N. Sondenaa, the operator of the said automobile did advise the defendant of the happening of the said accident and of the loss thereby occasioned and that the defendant did on or before October 20, 1948, make an investigation of the facts and circumstances and that thereafter the defendant did bill and receive from A. Von Borstel an additional premium on the said policy which the said A. Von Borstel did pay to the defendant on about the 6th day of November, 1948, and that in May of 1949, the defendant did demand from the said A. Von Borstel another premium on the said policy which the said A. Von Borstel refused to pay and that the premium paid to the defendant and accepted by the defendant has never been returned to the said A. Von Borstel and has never been offered to be repaid to the said A. Von Borstel as of the filing of this action.

X.

That the said A. Von Borstel, Helen L. Sondenaa and Elmer N. Sondenaa did tender to the defendant defense of the action of Louise Holm vs. Elmer N. Sondenaa et al, #185-807, which said tender of defense was refused by the said defendant on or about the 27th day of December, 1948, and that the said defendant has disclaimed any and all liability on the said policy and has refused to comply with any of the terms therein stated.

XI.

That by reason of the acts and conduct of the defendant as above set forth the defendant is estopped from asserting that the consent to the assignment of the said insurance policy was required and is further estopped from asserting that the defendant has no liability under the said policy.

XII.

That more than six months have elapsed from the notification to the defendant of the claim herein and of the action entitled "Louise Holm vs. Elmer N. Sondenaa et al." and that the claim has not been paid nor has the defendant attempted to settle the same or taken any position other than that the defendant has absolutely no liability on the said policy and that by reason thereof the plaintiff is entitled to recover in addition to the face amount of the policy herein such sum as may be reasonable as attorney's fees and that the sum of \$5,000.00 is a reasonable amount as attorney's fees hereunder.

XIII.

That in the said action of Holm vs. Sondenaa et al., the plaintiff recovered the sum of \$708.45, as special damages for medical expenses and recovered the sum of \$64.95 as costs, which said sums the defendant, under and by virtue of the terms of the said insurance policy has agreed to pay.

Wherefore, plaintiff demands judgment against the defendant for the sum of \$10,000.00, together with the additional sum of \$708.45, together with the additional sum of \$64.95 as costs together with

interest thereon at the rate of 6% per annum from the 2nd day of November, 1949, until paid, together with the additional sum of \$5,000.00 as reasonable attorney's fees herein.

/s/ NATHAN WEINSTEIN,
Attorney for Plaintiff.

Affidavit of service by mail attached.

[Endorsed]: Filed January 26, 1950.

[Title of District Court and Cause.]

ORDER

Upon application of defendant and for good cause shown,

It Is Hereby Ordered that defendant have to and including the 15th day of February, 1950, within which to file its answer herein.

Dated at Portland, Oregon, this 27th day of January, 1950.

/s/ JAMES ALGER FEE,
Judge.

[Endorsed]: Filed January 30, 1950.

[Title of District Court and Cause.]

ANSWER

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

Defendant denies each and every allegation contained in plaintiff's complaint and the whole thereof, except it admits:

I.

It is a reciprocal inter-insurance exchange existing under the laws of the State of California and duly licensed and admitted to do business in the State of Oregon.

II.

Prior to the 3rd day of October, 1948, defendant had issued to A. Von Borstel a certain automobile liability Policy No. 2098402.

III.

Defendant admits that sometime prior to the 3rd day of October, 1948, said A. Von Borstel transferred the automobile described in said policy.

IV.

On or about the 3rd day of October, 1948, there was an accident on Mt. Hood Loop Highway in Multnomah County, Oregon between the automobile which at one time had been the property of said A. Von Borstel and an automobile in which plaintiff

was riding, as a result of which plaintiff sustained some injury.

V.

Thereafter plaintiff recovered judgment against Elmer N. Sondenaar in the sum of \$12,000.00, together with special damages and costs and disbursements.

Wherefore having fully answered plaintiff's complaint defendant prays that plaintiff take nothing thereby.

KOERNER, YOUNG, SWETT
& McCOLLOCH,
CLARENCE J. YOUNG,

/s/ JOHN GORDON GEARIN,
Attorneys for Defendant.

Affidavit of service by mail attached.

[Endorsed]: Filed February 14, 1950.

[Title of District Court and Cause.]

INSTRUCTIONS REQUESTED BY
DEFENDANT

To the Court: The Court will understand that each subdivision of any instruction hereinafter requested is to be deemed a separate and complete instruction.

IV.

B. You are not to consider any controversy between the defendant Exchange and A. Von Borstel.

D. Before there can be an estoppel in this case against the defendant, the plaintiff must first prove by a preponderance of the satisfactory evidence all of the following, which constitute elements of estoppel.

(1) Agent Lawrence must have been authorized to make the statements which are claimed by the plaintiff.

(2) Agent Lawrence must have made a false representation or concealment of material facts.

(3) Agent Lawrence must have made the representation or statements with actual or constructive knowledge of the true facts.

(4) The party to whom the statements were made, that is, the assured A. Von Borstel must have been without knowledge or means of knowing the true facts.

(5) Agent Lawrence must have made the statements with the intention that the statements be relied upon and the party to whom the statements were made, that is the assured A. Von Borstel must have relied upon the statements of Agent Lawrence to his prejudice.

V.

If you find from the evidence in this case that no representation was made by the defendant to Helen L. Sondenaar, then an essential element of estoppel would be lacking and your verdict would have to be for the defendant.

VII.

A. There can be no estoppel where the conduct of the person asserting the estoppel is the result of such persons fault or negligence.

B. In other words, if the failure on the part of Helen L. Sondenaa to have the policy formally assigned to her was the result of her own fault or negligence rather than the statements made by agent Lawrence, then in that event you must find your verdict in favor of defendant.

VIII.

You are instructed that if under the circumstances of this case a reasonably prudent person would have made further inquiry as to the location and identity of an agent of the Exchange, and would have had the policy formally assigned within a reasonable period of time after the transfer of title, and you further find that Helen L. Sondenaa did not act as such reasonably prudent person would have acted, then in that event the plaintiff can not recover and your verdict would have to be in favor of the defendant.

IX.

Before you can find that the Exchange was estopped to deny that the policy was transferred to Helen L. Sondenaa based upon the retention of the premium paid by A. Von Borstel after the accident, there must appear from the satisfactory evidence that the Exchange knew of the transfer of title prior to the time the premiums were received.

XI.

A. The party setting up estoppel must have acted in reliance on the conduct or the representations of defendant. Helen L. Sondenaa must have had knowledge of the conduct or representations and must not only have been destitute of knowledge of the validity of the assignment without the consent of the defendant endorsed upon the policy but must also have been without convenient or ready means of acquiring knowledge of the validity of the assignment without the company's consent endorsed upon the policy. (To the Court: See *American Bank v. Port Orford Cedar Products Co.*, 140 Ore., 138, 12 P. (2d) 1014.)

B. A party relying upon an estoppel must exercise reasonable diligence to acquire knowledge of the facts and if a party conducts himself with careless indifference to means of information reasonably at hand, the doctrine of estoppel can not be invoked.

C. You are instructed in this connection that one of the provisions written on the face of the insurance policy required an endorsement of the consent of the defendant on the policy before the assignment of any interest under that policy would be valid.

XII.

A. Under the terms of 7 O.C.L.A., Sections 101-1301 to 101-1316, inclusive, which sections regulate reciprocal insurance in the State of Oregon, there can be no contract of insurance until such time as the applicant for insurance has become a subscriber to the Exchange.

B. You are instructed that under these circumstances Helen L. Sondenaa could not have become an insured of defendant Farmers Insurance Exchange until after she became a member of the defendant reciprocal exchange.

C. Since Helen L. Sondenaa never became a member of the defendant's Exchange, she was not the insured under this policy of insurance and defendant is therefore not liable for any judgment obtained against her husband.

XIV.

If you find that A. Von Borstel misunderstood the statement of Agent Lawrence, then in that event the plaintiff can not recover in this case.

[Title of District Court and Cause.]

VERDICT FOR PLAINTIFF

We, the jury, being duly sworn and empaneled to hear the above-entitled action find our verdict in favor of the plaintiff Louise K. Holm and against the defendants Farmers Insurance Exchange, also known as Farmers Automobile Inter Insurance Exchange, and assess the amount in the sum of \$10,000.00 with interest thereon at the rate of 6% per annum from November 2nd, 1949.

/s/ VICTOR R. BRUCK,
Foreman.

[Endorsed]: Filed June 17, 1950.

[Title of District Court and Cause.]

MEMORANDUM OPINION

The question reserved at the trial was whether retention of the premium and filling the financial responsibility statement constituted ratification. I think taken together they do. The sequence is:

(1) Lawrence led Von Borstel to believe, and through him his daughter, that, since the car transfer was in the family, the insurance remained good—so the jury found;

(2) The company was advised of this through its investigation of the accident;

(3) After being so advised, the company (a) continued to retain the premium paid after the accident, and (b) assumed responsibility for the accident under the Financial Responsibility Act.

I think (2) and (3) constitute ratification of (1).

Dated at Portland, Oregon, this 18th day of October, 1950.

/s/ CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed October 18, 1950.

[Title of District Court and Cause.]

ORDER

This matter having come on regularly for trial before the Hon. Claude McCulloch, Judge of the

above-entitled Court, on the 16th day of June, 1950, plaintiff appearing in person and by her attorneys, W. J. Prendergast, Jr. and Nathan Weinstein and Leo Levenson; defendants appearing by their attorneys, Koerner, Young, McColloch and Dezendorf, by Clarence J. Young and John Gearin; a jury having been duly impaneled and sworn to try the above-entitled cause, and the trial having proceeded, and the parties having rested, and the defendant having moved the Court for a directed verdict in their favor, and the plaintiff having moved the Court for a directed verdict in plaintiff's favor; and the Court having taken said motions under advisement and having submitted the matter to the jury on the issues raised by the pleadings, and the jury having rendered its verdict in favor of the plaintiff, and thereafter defendants having moved the Court for a judgment notwithstanding said verdict, and the Court having taken said motion under advisement, and the parties having filed briefs thereon, and the Court having duly considered the same and being fully advised in the matter,

It Is Therefore Ordered that the motion for judgment notwithstanding the verdict be, and the same is hereby denied, and that judgment shall be entered as hereinafter determined by the Court.

Dated this 28th day of October, 1950.

/s/ CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed October 28, 1950.

In the United States District Court
for the District of Oregon
Civil No. 5251

LOUISE K. HOLM,

Plaintiff,

vs.

FARMERS INSURANCE EXCHANGE, also
Known as FARMERS AUTOMOBILE
INTER INSURANCE EXCHANGE,

Defendant.

JUDGMENT

This matter coming on regularly for hearing before the Honorable Claude McColloch, Judge of the above-entitled Court, on the 16th day of June, 1950, plaintiff appearing in person and by and through her attorneys, W. J. Prendergast, Jr., Leo Levenson and Nathan Weinstein, defendant appearing by and through its attorneys, Koerner, Young, McColloch and Dezendorf, by and through Clarence J. Young and John Gearin, witnesses on the part of the plaintiff and defendant having been sworn and examined, defendant having moved the Court for judgment for a directed verdict in favor of the defendant, which said motion was by the Court denied and thereafter the plaintiff having moved for a judgment in favor of the plaintiff by directed verdict, which said motion having thereafter been denied, the jury thereupon having heard the arguments of counsel and the instructions of the Court, and the jury having

considered their verdict and having returned a verdict in favor of the plaintiff and against the defendant, and thereafter defendant having moved for a judgment notwithstanding the verdict, which said motion was by the Court denied.

Now, Therefore, It is Ordered and Adjudged that the plaintiff have and recover from and of the defendant the sum of \$10,000.00, together with the additional sum of \$708.45 as and for medical expenses of the plaintiff herein, ~~together with the additional sum of \$708.45 as and for medical expenses of the plaintiff herein,~~ together with the additional sum of \$64.95, together with interest on the sum of \$12,773.40, at the rate of six per cent per annum until paid from the 2nd day of Nov., 1949, together with the additional sum of \$1,500.00 as attorneys' fees herein, together with plaintiff's costs and disbursements herein taxed at \$.

Dated at Portland, Multnomah County, Oregon, this 31 day of October, 1950.

/s/ CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed October 31, 1950.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Farmers Insurance Exchange, also known as Farmers Automobile Inter Insurance Exchange, defendant above named, hereby appeals to the United States Court of Ap-

peals for the Ninth Circuit from the final judgment entered in this action on the 31st day of October, 1950, and from the whole thereof.

Dated at Portland, Oregon, this 13th day of November, 1950.

KOERNER, YOUNG,
McCOLLOCH & DEZENDORF,
JOHN GORDON GEARIN,
/s/ WILLIAM D. CAMPBELL,
Attorneys for Appellants.

State of Oregon,
County of Multnomah—ss.

Service of the foregoing Notice of Appeal by copy, as prescribed by law is hereby admitted, at Portland, Oregon, this day of November, 1950.

.....
Attorneys for Plaintiff.

[Endorsed]: Filed November 20, 1950.

[Title of District Court and Cause.]

SUPERSEDEAS BOND

Know All Men by These Presents that we, Farmers Insurance Exchange, as principal, and Fidelity & Deposit Company of Maryland, as surety, are held and firmly bound unto Louise K. Holm in the full and just sum of \$15,000.00 to be paid to the said Louise K. Holm, her executors, administrators or assigns, to which payment well and truly to be

made we bind ourselves, our successors and assigns jointly and severally by these presents.

Sealed with our seals and dated this 21st day of November, in the year of our Lord One Thousand Nine Hundred and Fifty.

Whereas lately at the United States District Court for the District of Oregon in a suit pending in said Court between Louise K. Holm, plaintiff and Farmers Insurance Exchange, defendant, a judgment was rendered against the said Farmers Insurance Exchange, and the said Farmers Insurance Exchange having filed in said Court a notice of appeal to reverse the judgment in the aforesaid suit in which notice was given that appeal was taken to the United States Court of Appeals for the Ninth Circuit.

Now, the condition of the above obligation is such that if the said Farmers Insurance Exchange shall prosecute its appeal to effect and satisfy the judgment in full, together with costs and interests and damages for delay if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interests and damages as the appellate court may adjudge and award if it fails to make its appeal good, then the above obligation to be void, otherwise to remain in full force and effect.

FARMERS INSURANCE
EXCHANGE,

By /s/ WILLIAM D. CAMPBELL,
One of Its Attorneys,
Principal.

[Seal]

FIDELITY & DEPOSIT
COMPANY OF MARYLAND,

By /s/ CLARENCE D. PORTER,
Attorney-in-Fact,
Surety.

Countersigned:

By /s/ CLARENCE D. PORTER,
Resident Agent.

ORDER

The foregoing Bond is hereby approved and is to stand as a supersedeas until the final determination of the appeal.

Nov. 22, 1950.

/s/ CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed November 22, 1950.

[Title of District Court and Cause.]

DEFENDANT'S STATEMENT OF POINTS TO
BE RELIED UPON ON APPEAL

Farmers Insurance Exchange, defendant above named and appellant in the appeal of the above-entitled action to the United States Court of Appeals for the Ninth Circuit, intends upon its appeal to rely upon the following points:

I.

The court erred in admitting in evidence testimony of witness Elmer Sondenaa of what A. von Borstel told him that Agent Lawrence had told von Borstel (Tr. 55).

II.

The court erred in admitting in evidence testimony of the witness Elmer Sondenaa as to the statements of adjuster Patterson (Tr. 62).

III.

The court erred in admitting in evidence the testimony of the witness Elmer Sondenaa relating to the payment of attorney's fees in the action entitled *Holm v. Sondenaa* (Tr. 65).

IV.

The court erred in admitting in evidence testimony of witness Helen Sondenaa of what A. von Borstel told her that Agent Lawrence had told von Borstel (Tr. 82).

V.

The court erred in overruling defendant's motion for an order directing a verdict against plaintiff (Tr. 142-149, and the order of the court entered thereon).

VI.

The court erred in failing to submit to the jury the factual question of whether or not defendant's acceptance and retention of a premium paid on or about November 8, 1948, was made with full knowledge of all the facts (Tr. 149, 154-156).

VII.

The court erred in giving to the jury as a part of its instructions an erroneous version of the testimony given at the trial as to what was said between Agent Lawrence and the assured, von Borstel (Tr. 150, 153).

VIII.

The court erred in failing to submit to the jury defendant's version of this conversation in addition to the version given by plaintiff (Tr. 150, 153).

IX.

The court erred in failing to give defendant's requested instructions hereinafter quoted, each of which was prefaced by the following request:

“To the Court: The Court will understand that each subdivision of any instruction hereinafter requested is to be deemed a separate and complete instruction.”

X.

The court erred in failing to give defendant's requested instruction IV B:

“You are not to consider any controversy between the defendant Exchange and A. von Borstel.”

XI.

The court erred in failing to give defendant's requested instruction IV D:

“Before there can be an estoppel in this case against the defendant, the plaintiff must first prove by a preponderance of the satisfactory

evidence all of the following, which constitute elements of estoppel.

“(1) Agent Lawrence must have been authorized to make the statements which are claimed by the plaintiff.

“(2) Agent Lawrence must have made a false representation or concealment of material facts.

“(3) Agent Lawrence must have made the representation or statements with actual or constructive knowledge of the true facts.

“(4) The party to whom the statements were made, that is, the assured A. Von Borstel must have been without knowledge or means of knowing the true facts.

“(5) Agent Lawrence must have made the statements with the intention that the statements be relied upon and the party to whom the statements were made, that is the assured A. Von Borstel must have relied upon the statements of Agent Lawrence to his prejudice.”

XII.

The court erred in failing to give defendant's requested instruction V:

“If you find from the evidence in this case that no representation was made by the defendant to Helen L. Sondenaa, then an essential element of estoppel would be lacking and your verdict would have to be for the defendant.”

XIII.

The court erred in failing to give defendant's requested instruction VII:

"A. There can be no estoppel where the conduct of the person asserting the estoppel is the result of such person's fault or negligence.

"B. In other words, if the failure on the part of Helen L. Sondenaa to have the policy formally assigned to her was the result of her own fault or negligence rather than the statements made by Agent Lawrence, then in that event you must find your verdict in favor of defendant."

XIV.

The court erred in failing to give defendant's requested instruction VIII:

"You are instructed that if under the circumstances of this case a reasonably prudent person would have made further inquiry as to the location and identity of an agent of the Exchange, and would have had the policy formally assigned within a reasonable period of time after the transfer of title, and you further find that Helen L. Sondenaa did not act as such reasonably prudent person would have acted, then in that event the plaintiff can not recover and your verdict would have to be in favor of the defendant."

XV.

The court erred in failing to give defendant's requested instruction IX:

“Before you can find that the Exchange was estopped to deny that the policy was transferred to Helen L. Sondenaar based upon the retention of the premium paid by A. Von Borstel after the accident, there must appear from the satisfactory evidence that the Exchange knew of the transfer of title prior to the time the premiums were received.”

XVI.

The court erred in failing to give defendant's requested instruction XI:

“A. The party setting up estoppel must have acted in reliance on the conduct or the representations of defendant. Helen L. Sondenaar must have had knowledge of the conduct or representations and must not only have been destitute of knowledge of the validity of the assignment without the consent of the defendant endorsed upon the policy but must also have been without convenient or ready means of acquiring knowledge of the validity of the assignment without the company's consent endorsed upon the policy. (To the Court: See *American Bank v. Port Orford Cedar Products Co.*, 140 Ore. 138, 12 P. (2d) 1014.)

“B. A party relying upon an estoppel must exercise reasonable diligence to acquire knowledge of the facts and if a party conducts himself with careless indifference to means of information reasonably at hand, the doctrine of estoppel can not be invoked.

“C. You are instructed in this connection that one of the provisions written on the face of the insurance policy required an endorsement of the consent of the defendant on the policy before the assignment of any interest under that policy would be valid.”

XVII.

The Court erred in failing to give defendant's requested instruction XII:

“A. Under the terms of 7 O.C.L.A., Sections 101-1301 to 101-1316, inclusive, which sections regulate reciprocal insurance in the State of Oregon, there can be no contract of insurance until such time as the applicant for insurance has become a subscriber to the Exchange.

“B. You are instructed that under these circumstances Helen L. Sondenaa could not have become an insured of defendant Farmers Insurance Exchange until after she became a member of the defendant reciprocal exchange.

“C. Since Helen L. Sondenaa never became a member of the defendant's Exchange, she was not the insured under this policy of insurance and defendant is therefore not liable for any judgment obtained against her husband.”

XVIII.

The court erred in failing to give defendant's requested instruction XIV:

“If you find that A. Von Borstel misunderstood the statements of agent Lawrence, then

in that event the plaintiff can not recover in this case.”

XIX.

The court erred in overruling defendant's motion for judgment non obstante veredicto. (See defendant's motion and court's order thereon, in record.)

KOERNER, YOUNG,
McCOLLOCH & DEZENDORF,
CLARENCE J. YOUNG,

/s/ WILLIAM D. CAMPBELL,
Attorneys for Appellants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 13, 1950.

[Title of District Court and Cause.]

DEFENDANT'S DESIGNATION OF CONTENTS OF RECORD

Farmers Insurance Exchange, defendant above named and appellant in the appeal of the above-entitled action to the United States Court of Appeals of the Ninth Circuit, hereby designates the following portions of the record, proceedings and evidence upon the trial to be contained in the record on appeal.

Pleadings.

Verdict.

Judgment entered September 30, 1950.

All of the Exhibits.

Defendant's requested instructions Nos. IV B and D, V, VII, VIII, IX, XI, XII, and XIV.

The whole of the transcript of proceedings upon the trial.

The Court's ruling on defendant's motion for directed verdict.

The Court's ruling on plaintiff's motion for directed verdict.

Defendant's motion for judgment non obstante veredicto.

The Court's ruling thereon.

The Court's memorandum opinion.

Defendant's notice of appeal and supersedeas bond.

This designation.

Defendant's statement of points to be relied upon at the appeal.

KOERNER, YOUNG,
McCOLLOCH & DEZENDORF,
CLARENCE J. YOUNG,

/s/ WILLIAM D. CAMPBELL,
Attorneys for Farmers
Insurance Exchange.

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 13, 1950.

[Title of District Court and Cause.]

ORDER

The motion of defendant Farmers Insurance Exchange for an order authorizing the transmission of the original exhibits in this case to the court to which appeal has been taken coming on at this time regularly to be heard and the Court being fully advised in the premises,

It Is Ordered that the Clerk of this Court transmit all of the exhibits introduced in evidence upon the trial of the above-entitled action with the record on appeal to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit for the use of the Judges thereof, said exhibits to be by him preserved and returned to the Clerk of this Court upon disposition of the appeal.

Dated this 20th day of December, 1950.

/s/ CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed December 20, 1950.

[Title of District Court and Cause.]

DOCKET ENTRIES

1950

Jan. 26—Filed petition for removal from Multnomah County.

Jan. 26—Filed bond on removal.

Jan. 26—Filed notice of removal.

1950

Jan. 27—Entered order allowing deft. twenty days to answer.

Feb. 14—Filed answer.

Feb. 24—Filed plaintiff's demand for jury trial.

May 12—Entered order setting for trial on June 13, 1950, 10 a.m.

May 25—Issued subpoena and handed to Attorney Gearin.

May 24—Filed notice to take deposition of Elmer N. Sondenaa, et al. at Toledo, Oregon.

May 24—Filed notice to take deposition of A. Von Borstel at The Dalles.

May 25—Filed petition Atty. Gearin for subpoena duces tecum Sondenaa, et al.

May 25—Filed and entered order for subpoena duces tecum, Elmer N. Sondenaa, et al.

May 25—Issued subpoena duces tecum to marshal.

June 5—Filed deposition of Helen L. Sondenaa for defendant.

June 5—Filed deposition of Elmer N. Sondenaa for defendant.

June 7—Filed deposition of A. Von Borstel for defendant.

May 31—Filed subpoena with marshal's return.

May 31—Filed subpoena (def.) with marshal's return.

1950

- June 16—Entered order admitting Nathan Weinstein specially for purposes of this case, order excluding witnesses from courtroom, record of impaneling jury and trial.
- June 16—Filed petition for subpoena duces tecum.
- June 16—Filed and entered order for subpoena duces tecum.
- June 17—Record of jury trial and motions of both plaintiff and defendant for directed verdict and order reserving said motions and record of verdict.
- June 17—Filed verdict for ptff. for \$10,000 with int. at 6% from 11/2/49.
- June 17—Entered order for meals.
- June 22—Filed defendant's motion for order setting aside verdict of the jury.
- June 21—Record of further hearing on motion of deft. for directed verdict in its favor argued and reserved.
- Sept. 2—Filed deft.'s opening brief.
- Sept. 5—Record of further hearing on motion of deft. for order setting aside verdict and order allowing ptff. 2 weeks to file brief.
- Sept. 26—Filed ptffs. brief on motion for judgment N. O. V.
- Oct. 13—Filed deft's reply brief on motion for judgment N. W. V.

1950

Oct. 18—Filed memorandum opinion.

Oct. 28—Filed and entered order denying deft.'s motion for judgment notwithstanding verdict.

Oct. 30—Record of hearing on judgment and order reserving.

Oct. 31—Filed and entered judgment for plaintiff for \$10,000, together with additional sum of \$64.95 with interest on the sum of \$12,773.40 at the rate of 6% per annum until paid from the 2nd day of Nov., 1949, and \$1500 atty. fees.

Oct. 31—Filed cost bill of plaintiff.

Oct. 31—Entered judgment in Lien Docket.

Nov. 17—Filed notice to tax costs. Costs taxed at \$132.60.

Nov. 20—Filed notice of appeal by defendant.

Nov. 20—Copy of notice of appeal mailed to W. J. Prendergast.

Nov. 22—Filed supersedeas bond.

Dec. 13—Filed transcript of proceedings in duplicate, dated June 16, 17 and October 30, 1950.

Dec. 13—Filed defendant's designation of record on appeal.

Dec. 13—File defendant's statement of points.

Dec. 20—Filed and entered order to send original exhibits.

United States District Court
District of Oregon
Civil No. 5251

LOUIS K. HOLM,

Plaintiff,

vs.

FARMERS INSURANCE EXCHANGE, also
Known as FARMERS AUTOMOBILE IN-
TER INSURANCE EXCHANGE,

Defendant.

Portland, Oregon, June 16, 1950, A.M.

Before: Honorable Claude McColloch,
Judge, and a jury.

Appearances:

MR. WILLIAM J. PRENDERGAST,
MR. LEO LEVENSON and
MR. NATHAN WEINSTEIN,
Attorneys for Plaintiff.

MR. CLARENCE J. YOUNG, and
MR. JOHN GORDON GEARIN,
(Koerner, Young, McColloch & Dezendorf),
Attorneys for Defendant.

TRANSCRIPT OF PROCEEDINGS

The Court: I think I need a little more information about this. I looked over the file last night. I have asked the jury to stay outside for a little while.

Mr. Prendergast: I wonder if it would be proper at this time, your Honor, for me to move the admission of Mr. Nathan Weinstein for the purpose of the trial of this case. I will try the case. Mr. Weinstein is the attorney who tried the case for damages in the State Court and he has an application before this Court for admission, but has not been admitted as yet.

The Court: Is there any objection?

Mr. Gearin: No, your Honor.

The Court: Motion allowed.

I suppose I might as well lead off. Is this customary procedure, after judgment is obtained? I don't remember having that kind of a case before. Are you bringing an independent suit?

Mr. Prendergast: Yes, your Honor.

The Court: You claim there was insurance covering this loss and they deny it?

Mr. Prendergast: That is right, sir. It is an issue of coverage, as I understand it. The action was brought under the theory of estoppel, or sometimes called waiver. Whatever you call it, "waiver" or "estoppel," the effect is estoppel. There are many authorities on the subject.

The Court: Have you pleaded that?

Mr. Prendergast: Yes. We have pleaded estoppel.

The Court: Did you plead waiver?

Mr. Prendergast: Not as a waiver, your Honor. We pleaded it as an estoppel. As I say, some text writers call it "waiver"; it is sometimes called an "estoppel." I think the Court could deem the term

“estoppel” to be a better term, the company [2*] being estopped to deny recovery under the facts.

The Court: You have got some stuff in here that sounds like ratification to me, that they accepted the premium after the loss.

Mr. Prendergast: It is the plaintiff’s contention here, your Honor, that the agent of the company was informed of the transfer of this automobile. It was inquired of this agent as to what would be necessary to transfer this policy from the father to the daughter. It is the plaintiff’s contention that the agent informed the father that, being a transfer within the family, the coverage would be extended to the automobile but that the daughter would sometime “sign” this policy.

The Court: I have read all the papers. I know about that. That wasn’t what I was talking about.

Mr. Gearin: I do not want to interrupt at this time, but——

The Court: You are not interrupting. I want to hear you.

Mr. Gearin: First, your Honor, I would like to suggest that the witnesses be excused from the courtroom until such time as they are called.

The Court: All right. Take them out. Don’t allow them to mingle with the jurors. Put them somewhere else.

(Witnesses excused from the courtroom.)

Mr. Gearin: In this case, if your Honor please, the issue, as I see it, is as to whether or not the company should be estopped to deny coverage because of alleged statements made by [3] an agent

* Page numbering appearing at top of page of original Reporter’s Transcript of Record.

prior to the time of the loss. That is the only question, as I see it. The question of estoppel by payment of the premium I think is not in the case.

We have taken the depositions of all the parties. The company did not know of the transfer and was not advised of the transfer of the automobile at the time the insured made a premature payment on the policy; the policy was not due—the payment was not due when they made the payment, and at that time neither the insured nor the driver, nor anyone connected with them, had advised the company of the transfer of the automobile.

That is a little different story, your Honor. This Inter Insurance Exchange setup, as governed by the Oregon statutes, provides you have got to be a member of the group before you can participate. The assured lived in Kent, Oregon.

The Court: You don't need to cover that. I have read all the deposition testimony.

Mr. Gearin: This is our situation, your Honor: The issue, as I see it, is what the agent said and what is the significance, or consequence, of his statement, if any.

The Court: I do not agree with you. With the ordinary policy of insurance on an automobile—every agent in the United States will tell you this—when you pay the premium the car is being insured. That is the basis on which the policy is sold—the car is being insured. Short of somebody stealing your car, whoever is driving it with your authority is covered by the insurance. [4]

Mr. Gearin: I submit, your Honor, the liability

of the defendant in this case is governed not by what the common policy is but what this policy of insurance is, under the Oregon statutes regarding inter-insurance exchanges.

The Court: Don't start shouting at me. The father of the girl owned the car?

Mr. Gearin: Yes.

The Court: The insurance was in his name?

Mr. Gearin: Yes; that is right.

The Court: He had written insurance on it by the representative of the company at The Dalles. He gave the car to his daughter. You may dispute these facts, of course. He gave the car to his daughter. He says that he talked to the district representative of the company at The Dalles and that he told him that it would be better to make the technical transfer down where she lived; and he handed the daughter the insurance policy and thought in his own mind, "Well, all right."

The company representative at The Dalles told him he had better make the technical transfer, whatever was necessary, down where she lived at Toledo, and, as the transfer was from father to daughter, then she could recover. That is the father's testimony in his deposition.

Then she came back to Toledo and the baby that she was carrying at the time got that off her mind. Meanwhile, down there they had made some inquiry as to who represented the company, [5] but it did not pursue it to a final conclusion; in other words, she didn't do anything as far as getting the papers transferred was concerned. She went back with

her husband to her father's home in Kent, to show off the baby, I guess, and coming back they had this accident, out here east of Gresham.

Then she and her husband were sued. Her husband was driving. She and the baby were riding in the car. Mr. Weinstein got a judgment for this plaintiff, Louise K. Holm, who was in the car at the time of the accident. The company declined to defend the case because it did not have coverage. They employed some other lawyers here to defend them. It was contested on the merits, wasn't it?

Mr. Weinstein: Yes, your Honor.

The Court: But before that Mr. Patterson, representing the company in some capacity, called on them at their home in Toledo, investigating the accident, and he got these papers, whatever they were, including the policy. No? He didn't get the policy?

Mr. Prendergast: No.

The Court: What were the papers he got?

Mr. Weinstein: Letters from myself and another attorney.

The Court: Which Mr. Patterson was that, the man who was a lawyer here?

Mr. Gearin: No, your Honor. It was Mr. William Patterson of Eugene, Oregon.

The Court: Eugene, Oregon? [6]

Mr. Gearin: Yes.

The Court: What was his capacity?

Mr. Gearin: Adjuster.

The Court: Adjuster?

Mr. Gearin: Yes.

The Court: They claim—and of course I guess you will dispute it—that he told them the company would defend but, anyhow, the company did not defend, and they got other lawyers, and they were defeated on the merits of the case. Then dates become important.

Mr. Gearin: Yes, your Honor. On July 29, 1948, title to the car was transferred by the Secretary of State from the assured to his daughter, Helen.

The Court: Those are not the dates I want.

Mr. Gearin: The date of the accident?

The Court: Wait a minute. I will tell you the dates I want.

Mr. Gearin: I am sorry, your Honor.

The Court: The insurance was prepaid to when?

Mr. Gearin: To November 18, 1948.

The Court: The accident was when?

Mr. Gearin: October 3, 1948.

The Court: When did the company decline liability?

Mr. Gearin: The company declined liability by letter dated December 27, 1948.

The Court: You say the insurance was prepaid to October 3rd? [7]

Mr. Gearin: No, at the time of the transfer of the automobile the insurance was paid up to November 18th.

The Court: The accident was on October 3rd?

Mr. Gearin: That is correct.

The Court: Prepaid. On November 18th he paid another premium, didn't he?

Mr. Gearin: No, he paid the premium by a check dated November 5th, which I think was received in the Portland office or cashed on either the 6th or 7th.

The Court: Anyhow, it was cashed?

Mr. Gearin: That is correct.

The Court: That paid it up until when?

Mr. Gearin: Six months from November 18, 1948. That would be May 18, 1949.

The Court: That has never been refunded?

Mr. Gearin: It has not, your Honor.

The Court: That was after the accident. You claim they got no notice at the time the accident occurred?

Mr. Gearin: That is correct, neither from von Borstel nor Mrs. Sondenaa or anybody else advising the exchange that title had been transferred. It was not until the 10th of November, 1948, three or four days after we received the premium, that we were advised by Mr. Weinstein of the fact that claim was being made under the von Borstel policy.

The Court: Why didn't you return the [8] premium?

Mr. Gearin: For the reason that at that time the insured, von Borstel, did not advise us and, furthermore, the policy of insurance provided coverage with regard to other cars which he himself might have driven; in other words, he had protection to a limited extent up to May 18th, because the policy provided that he would have coverage on driving other cars.

The Court: The accident was October 3rd?

Mr. Gearin: That is correct, your Honor.

The Court: When did the company first get notice of the accident?

Mr. Gearin: The company first got notice of that, I think, on the 11th or 12th of October, by letter from Mr. Sondenaa.

The Court: I don't care how they got it.

Mr. Gearin: May I make a statement in that regard?

The Court: You may pretty soon.

Mr. Gearin: All right.

The Court: But, having notice of the accident, they accepted the further payment of premium on November 5th.

Mr. Gearin: That is not correct, your Honor.

The Court: All right. Correct me, then.

Mr. Gearin: That is not correct, your Honor, because at the time we accepted it we knew of an accident Mr. Sondenaa was in but the notice he gave the company did not state what policy was involved, other than a number. He did not give Mr. von Borstel's name. We got his letter, and we didn't know who he was. We had [9] no way of telling what the situation was.

He wrote a letter and said, "I have been in an accident. My name is Elmer Sondenaa." We checked our files and we had no assured named Elmer Sondenaa.

The Court: What did you do about it?

Mr. Gearin: We didn't do anything because he wasn't an assured. He wrote a letter. He said,

“There has been an accident and somebody hurt. My name is Elmer Sondenaa.”

The Court: Did he give a description of the car?

Mr. Gearin: That I do not know, your Honor. The letter is one of the exhibits here. He gave a policy number at the time, which was checked immediately upon receipt of the letter. It describes the automobile—no. I beg your pardon—the other automobile that was involved. We wrote to Mr. Moon, a former agent at Wasco who sold the policy ten years previously to Mr. von Borstel, and gave him the policy number.

I will tell you what happened there. The company immediately checked the list of assureds and Mr. Elmer Sondenaa was not insured. He gave an address at Toledo, Oregon. We checked the policy number and found it was issued to Mr. A. von Borstel at Kent, Oregon, in Eastern Oregon. There appeared to be no connection between the two. It was a short time thereafter that we received a call from Mr. Weinstein, and we informed him we did not have the car insured to Mr. Sondenaa, by that name, in other words, but that it might be with the State Farm.

Mr. Weinstein then talked with the State Farm and found from their agent at Toledo that the Sondenaa's had been in there with their policy, and it was issued to von Borstel, and that information was given to us by Mr. Weinstein on the 10th of November.

On that very day we went out and took a statement from the Sondenaa's, and three days later we

took the statement of von Borstel. The accident was never investigated before, and the first thing we did, upon notice of this accident, or knew that it was in any way tied up with one of our assureds was that within 24 hours we obtained the statements from them and found out for the first time that the premium was prepaid in advance by the assured——

The Court: What estoppel do you claim?

Mr. Prendergast: The facts are a little different, your Honor, than Counsel has stated, I think, so far as the company not knowing about this.

The estoppel we claim is this: In July von Borstel, having had a policy in force for some ten years, one Moon being the agent at Kent, some 60 miles from The Dalles, went into The Dalles and went to the defendant's agent there, who was the general agent for the company in The Dalles, and said, "I am giving this automobile to my daughter. I have bought another automobile that is protected under another automobile insurance policy that has nothing to do with the Farmers. I am giving [11] my car to my daughter and I want to be sure that she is covered."

The agent said, "If it is a transaction within the family, the automobile is covered, but she should 'sign' the policy and it is preferable that she do it at Toledo, where she lives." We maintain, therefore, the company then knew about this transfer of this automobile.

Immediately after the accident happened, the next day, Sondenaa wrote to Moon, who had been

the agent for the company, and told him he had had an accident with this same automobile that was covered by the policy, and gave the policy number and described the accident.

The company knew then about the accident.

Then, not prepaying it, but upon receipt of notice of premium due, von Borstel sent in his check to the Farmer Insurance Exchange, covering not only this automobile but the truck that he was operating as a wheat farmer, and not any other automobile, because every vehicle that he had was covered by a separate insurance policy. They accepted that premium, and not only did they have notice in their *Portland here*, just as they had notice of the accident, but they knew that this car had been given to the daughter.

The Court: Mark all your documents now.

Mr. Gearin: The Branch Claims Manager, who will not be a witness, is here, and I think it is proper for him to be here at this time at the counsel table.

The Court: Yes. [12]

Mr. Prendergast: I believe we are ready to mark the plaintiff's exhibits.

The Court: Don't take a lot of time. Has each seen the other's exhibits?

Mr. Gearin: I have not seen the plaintiff's, your Honor.

The Court: Look at those, then.

Mr. Gearin: We have seen all of these, your Honor.

The Court: Mark the exhibits for the plaintiff, then.

Plaintiff's Exhibits for Identification

Number:	Description
3	Copy of Judgment in the Circuit Court of the State of Oregon for the County of Multnomah in cause entitled "Louise Holm, Plaintiff, vs. Elmer N. Sondenaa and Helen L. Sondenaa, husband and wife, and A. von Borstel, Defendants," No. 185-807.
4	Policy No. 2098402, Farmers Automobile Inter-Insurance Exchange issued to A. von Borstel, together with endorsements thereon.
5	Check dated November 5, 1948, payable to Farmers Insurance Exchange, in amount \$22.42, signed Amandus von Borstel.
6	Carbon copy of letter dated December 31, 1948, Farmers Insurance Exchange by James N. Tomlin to Elmer N. Sondenaa and Helen L. Sondenaa, Toledo, Oregon.
7	Letter dated December 30, 1948, Farmers Insurance [13] Exchange, to Brown & Van Vactor, Attorneys-at-Law, The Dalles, Oregon.
8	Letter dated December 27, 1948, Farmers Exchange, to Mr. A. von Borstel, Kent, Oregon.
9	Letter dated December 28, 1948, Farmers Insurance Exchange, to Mr. Elmer Sondenaa, Toledo, Oregon.

Defendant's Exhibits for Identification

Number:	Description
10	Telephone Directory, Corvallis and vicinity, December, 1947.
11	Telephone Directory, Corvallis and vicinity, December, 1948.
12	Handwritten statement, dated November 10, 1948, Toledo, Oregon, signed by Elmer N. Sondenaa.
13	Handwritten statement, dated Kent, Oregon, November 13, 1948, signed by A. von Borstel.
14	Report of Accident signed by A. von Borstel.
15	Report of Accident, dated October 5, 1948, signed by Elmer N. Sondenaa, Toledo, Oregon, addressed to Farmers Automobile Insurance, George B. Moon, Wasco, Oregon.
16	Statement signed by Helen L. Sondenaa, dated Toledo, Oregon, November 18, 1948.
17	Statement signed by Helen L. Sondenaa, Toledo, Oregon, [14] November 18, 1948.
18	Letter dated November 16, 1948, Nathan Weinstein, Attorney-at-Law, to Elmer and Helen L. Sondenaa.
19	Memorandum signed by Amandus A. von Borstel, requesting change of Policy No. 2098402 to Plymouth sedan, with copy of acknowledgment of Farmers Automobile Inter Insurance Exchange attached.

Number :	Description
20	Letter dated November 15, 1948, Nathan Weinstein, Attorney-at-Law to Farmers Automobile Inter Insurance Exchange.
21	Certified copy of Certificate of Title issued to A. von Borstel, covering Plymouth sedan, and copy of Assignment of Title by registered and legal owners.
22	Copy of Interoffice Memorandum dated October 8, 1948, from Bill Lawrence to Northwest Branch, Farmers Automobile Insurance Exchange.
23	Form of Agent's Report, Farmers Insurance Exchange.
24	Certified copy of pleadings in case of Louise Holm, Plaintiff, vs. Elmer N. Sondenaa and Helen L. Sondenaa, husband and wife, and A. von Borstel, No. 185-807, Circuit Court of the State of Oregon for Multnomah County.
25	Deposition of Elmer N. Sondenaa, taken on behalf of [15] defendant May 31, 1950.
26	Deposition of Helen L. Sondenaa, taken on behalf of defendant May 31, 1950.
27	Deposition of A. von Borstel, taken on behalf of defendant June 2, 1950.

The Court: Do you want a jury?

Mr. Prendergast: Yes, please, your Honor.

The Court: This is the kind of a case, I believe, that will take two days to try with a jury. That is plain to me, so plan on today and tomorrow. I

will tell you both this is not the kind of a case evidently for a jury. I am pretty sure in my own mind I will be the one who will decide this case rather than the jury.

Mr. Prendergast: I wonder if I may confer with Counsel. The reason I say that is that we have made a request for a jury trial, but may I confer a moment with Counsel?

The Court: Yes. Do you want a jury?

Mr. Gearin: May we confer, your Honor?

The Court: Certainly. I don't care whether you have a jury or not.

(Intermission.)

Mr. Gearin: I had originally made a demand for a trial by [16] jury. The defendant at this time is willing to proceed to trial without a jury. We are willing to waive a jury, your Honor.

Mr. Prendergast: The plaintiff would like to have a jury.

The Court: All right. Keep the witnesses outside.

(Recess.)

The Court: Call a jury.

(Jury was thereupon duly empaneled and sworn to try the cause.)

(Open Statement by Mr. Prendergast, Attorney for Plaintiff.)

The Court: Ladies and Gentlemen, because of the fact I have to leave early and I have no way

of knowing how extended Mr. Gearin's opening remarks will be, I am going to recess now, so he may speak without breaking into his statement. Come back at 1:30.

Meanwhile, don't discuss this case or permit it to be discussed in your presence. Don't do that until the case is finally submitted to you for deliberation. You may go now. The others will remain sitting while the jury leaves the room. Come back at half-past one, please.

(Thereupon a recess was taken until 1:30 p.m.) [17]

(Court reconvened at 1:30 o'clock p.m., Friday, June 16, 1950, pursuant to recess.)

(Opening statement by Mr. Gearin, of Attorneys for Defendant.)

Plaintiff's Testimony

AMANDUS A. VON BORSTEL

was thereupon produced as a witness on behalf of Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Prendergast:

Q. Your name is A. von Borstel or Amandus von Borstel? A. Yes.

Q. Where do you reside?

A. Kent, Oregon.

(Testimony of Amandus A. von Borstel.)

Q. Where is Kent?

A. About 70 miles from The Dalles, south of The Dalles, on Highway 97.

Q. What is your occupation, sir?

A. Farmer.

Q. How long have you lived in Kent?

A. My entire life.

Q. How is that, please?

A. Fifty-three years.

Q. Have you been farming at Kent for all fifty-three years? [18]

A. No, I took over the farm in 1920, so I have been there for about thirty years on the farm. Before that I was farming with my father.

Q. You are the father of Mrs. Sondenaa, is that correct?

A. That is correct.

Q. What is Mrs. Sondenaa's first name?

A. Helen.

Q. What is her husband's name?

A. Elmer.

Q. When was your daughter married?

A. 1946 or 1947. I am not so certain of the date.

Q. Did she live up there at Kent with you until her marriage?

A. Part of the time; she had attended school at Oregon State College for part of two years.

Q. Have you had any business dealings with the Farmers Insurance Exchange or the Farmers Inter Insurance, Mr. von Borstel?

A. I had a policy with the Farmers Exchange since 1938.

(Testimony of Amandus A. von Borstel.)

Mr. Prendergast: May we have the witness handed Plaintiff's Exhibit No. 4 for Identification?

(Plaintiff's Exhibit No. 4 for Identification handed to the witness.)

Q. Mr. von Borstel, you now have in your hand an exhibit marked Plaintiff's Exhibit No. 4. Can you tell us what that exhibit is?

A. If you will pardon me, I will put on my glasses because it is a little difficult for me to see this print. [19]

Q. I just want you to identify the exhibit, Mr. von Borstel. Tell us what the exhibit consists of.

A. Well, that is the policy on my automobile.

Q. Is that the policy of which you spoke when you spoke of having a policy with Farmers since 1938? A. It is.

Q. Can you give us, for identification purposes, the number of that policy? Do you have it there?

A. 2098402. The policy number is 2098402. Pardon me. I will have to get on my glasses again to read that. 2098402.

Q. That policy describes a motor vehicle, does it not? A. Yes, a 1936 Plymouth sedan.

Q. Would you look at the other papers attached thereto, the endorsements that have been attached to that policy, and testify as to whether or not there is any endorsement showing a change of automobile on there?

A. Yes, there is a rider attached here, showing

(Testimony of Amandus A. von Borstel.)

that the policy was transferred from a 1936 Plymouth to a 1940 Plymouth.

Q. In what year?

A. The fourth month of '42.

Q. You owned a 1936. Was the 1936 model the first car or the 1938? A. It was a 1936 car.

Q. You also owned a 1940 car?

A. Yes. [20]

Q. At the time of the marriage of your daughter, what automobile did you own, Mr. von Borstel?

A. I owned this 1936 Plymouth. I also owned a 1948 Dodge.

Q. Was that a 1948 Dodge automobile?

A. A Dodge sedan.

Q. Did you have any other motor vehicles, including trucks or pickups, that you had insured with the Farmers Inter Insurance Exchange?

A. I had one truck.

Q. Was that covered by a separate policy?

A. By a separate policy, yes.

Q. Over what period of time did you carry that policy on the truck?

A. If I recollect, it was in the fall of 1942 that I took out that policy.

Q. So you were paying two different premiums to the Farmers Insurance, one on this particular policy that you now hold in your hand, naming the 1936 Plymouth, and which was changed later to a 1940 Plymouth, and you were also paying premiums on the policy covering the operation of the

(Testimony of Amandus A. von Borstel.)

truck, is that correct? A. That is correct.

Q. From whom did you purchase these policies?

A. I purchased this policy here from George Moon in Wasco.

Q. Who was George Moon? [21]

A. George Moon?

Q. Who was George Moon?

A. He is a dealer, a hardware dealer in the town of Wasco, Oregon.

Q. Was he representing the Farmers Insurance Exchange at the time you purchased the policy?

A. He was at that particular time.

Q. Did you continue to pay premiums on this policy which you now hold in your hand, and which is marked Plaintiff's Exhibit No. 4, from 1938 up through 1948, Mr. von Borstel?

A. Yes, I did.

Q. How were those premiums paid? Were they paid annually or semi-annually?

A. Semi-annually.

Q. What method did you use to pay them, usually? A. By check.

Q. Would you receive a notice from the company of the premium being due?

A. Premium notices were mailed to me prior to the due date.

Q. What was the due date on that policy, do you remember?

A. I think one was the 18th of May and the other one was the 26th day of May.

Q. I mean this particular policy, Exhibit No. 4?

(Testimony of Amandus A. von Borstel.)

A. That would be the 18th of May and the 18th day of November.

Q. Each six months you would pay half the premium, is that correct? [22]

A. Yes, that is correct.

Q. During the time, from the issuance of the policy in May, 1938, until October of 1948, did you ever make any claims on your policy, the policy marked Exhibit No. 4, against the Farmers Insurance Exchange whatsoever?

Mr. Gearin: We would like to object to that, your Honor, on the ground that it is incompetent, irrelevant and immaterial to this controversy before the Court.

The Court: Sustained.

Q. (By Mr. Prendergast): Did you have any business transactions with the Farmers Insurance Exchange in relation to this particular policy, marked Exhibit 4, in those ten years, other than the payment of premiums?

A. Only the transfer of the policy from the 1936 car to the 1940 and for a change of motor in the 1940 car, putting in a new motor. I put in a new motor and I had to send in the new motor number to the company, so it would cover that same car with a new motor.

Q. You spoke, Mr. von Borstel, of owning a Dodge sedan in 1948. When did you acquire the Dodge sedan?

A. Either in June or the first part of July, 1948.

(Testimony of Amandus A. von Borstel.)

Q. This Dodge sedan was covered by insurance?

A. Yes. I had it insured the moment that the title was transferred to me. [23]

Q. With whom was that covered?

Mr. Gearin: Objected to, your Honor, on the ground it has no bearing on the present controversy.

The Court: Sustained.

Mr. Prendergast: I will withdraw that question.

Q. Was that car insured with Farmers?

Mr. Gearin: The same objection.

The Court: Let him answer Yes or No. Was it insured with Farmers? A. No.

Q. (By Mr. Prendergast): When you purchased the Dodge automobile, which you have just testified you insured as soon as you acquired it, with some other company than Farmers, what did you do with the 1940 Plymouth?

A. I gave it to my daughter.

Q. Before you gave it to your daughter, what, if anything, did you do with the car?

A. I took it in to The Dalles to have a ring job and check the motor, recondition it so that the car would be in good running order when I turned it over to my daughter.

Q. Prior to your taking it in for some work on the motor, did you notify your daughter you were going to give her this car? A. Yes, we did.

Q. She was married at that time?

A. Yes. [24]

Q. Where was she living?

A. She was living at Toledo, Oregon.

(Testimony of Amandus A. von Borstel.)

Q. With her husband, Mr. Elmer Sondenaa?

A. Yes.

Mr. Prendergast: If the Court please, we have a very important matter that we would like to discuss with the Court for a minute or two. It will facilitate the trial, and inasmuch as the Court indicated that we might have to continue through tomorrow, it being a holiday in other courts, it is very necessary that we confer with your Honor now.

The Court: Is it about subpoenaing some papers?

Mr. Prendergast: Yes.

The Court: You don't need to talk to me about it. The Clerk has handed me an order which I will sign, if the other side has no objection. Have you filed a motion here?

Mr. Prendergast: Yes, we have a petition for a subpoena duces tecum.

The Court: If you have got an order based on the petition, bring it up here.

Mr. Prendergast: The Clerk handed that up to your Honor.

Q. I forgot whether I asked you this or not. Did you notify your daughter prior to that time that you were going to give her the car?

A. I did.

Q. Had you made any arrangements as to the date on which you [25] were going to deliver the car to her? Did you notify her as to the date on which you were going to give it to her?

A. No. We just told her we were getting our Dodge car, and for them to come up and get the car.

(Testimony of Amandus A. von Borstel.)

Q. Was it your intention, and did you make it as a gift to her or did she pay for it?

A. I made it as a gift.

Q. On the occasion of the car being at the repair shop or the garage in The Dalles for these repairs, did you go in to The Dalles?

A. I was in The Dalles, yes.

Q. Could you give us the approximate time that you were in The Dalles about this work on this Plymouth?

A. It was right around the 1st of July.

Q. On that occasion did you contact or talk to anybody representing the Farmers Inter Insurance Exchange?

A. Yes, inasmuch as I contemplated turning title to this car to my daughter, I stopped in at the Farmers Insurance Exchange office and contacted Mr. Lawrence, their representative in The Dalles.

Q. In relation to this garage where the car was being repaired, would you tell the jury where this office of Farmers was.

A. There is a second-hand or used car lot on Fourth and——

Q. In relation to the garage, how far away was the office?

A. At the southeast corner, across from the [26] garage.

Q. In other words, in coming out of the garage you could see the Farmers Insurance Exchange office?

A. That is correct.

(Testimony of Amandus A. von Borstel.)

Q. Did you know Mr. Lawrence or had you ever talked to him prior to that time?

A. No, I didn't know the gentleman.

Q. Did you go over to the office, Mr. von Borstel?

A. I went to that office.

Q. Why did you go over to that office?

A. I went over to see what was necessary to transfer that insurance policy to my daughter.

Q. With whom did you speak?

A. With Bill Lawrence.

Q. How long was your conversation with him? How long did it take?

A. Just a matter of a few minutes.

Q. Will you tell the jury in substance what your conversation was with Mr. Lawrence?

A. I asked Mr. Lawrence what was necessary to do in order to transfer this policy from my name to my daughter's, and he instructed me that the policy would have to be signed by my daughter.

Q. Did he say anything else?

A. Then he asked where my daughter resided, and I told him, and he said she would have to sign that policy with him or with their [27] nearest representative at Toledo.

Q. Was there any conversation about the coverage in the meantime?

A. Yes, he told me since these premiums—being a transaction within the family, as long as the premiums were paid on this policy that the policy would cover.

(Testimony of Amandus A. von Borstel.)

Q. Did you inform him you were transferring the car to your daughter? A. I did.

Q. Did he ask you anything about whether the premium had been paid?

A. That I don't recall.

Q. Did he offer to supply you with any blanks or forms? A. Not that I remember.

Q. After talking to Mr. Lawrence, the discussion you have just repeated, was there any further discussion with him?

A. No, none whatsoever.

Q. Did you then impart that information to your daughter? A. I did.

Q. When did you deliver the car to her?

A. It was sometime in July.

Q. If title was transferred on the books of the Secretary of State of Oregon on the 29th of July, showing that application was made on the 25th of July, would that refresh your memory as to the approximate date you delivered the car to your daughter? [28]

A. Well, no, I couldn't remember the approximate date.

Q. How did your daughter get the car from you, Mr. von Borstel?

A. Her and her husband come up and got the car.

Q. What was her physical condition at that time? A. She was pregnant at the time.

Q. When did she have her baby, Mr. von Borstel? A. Sometime in September.

(Testimony of Amandus A. von Borstel.)

Q. At the time of the delivery of this 1940 Plymouth to your daughter, when she came up with her husband to get it, did you deliver her this insurance policy—— A. I did.

Q. ——that is the policy you hold in your hand, marked Exhibit No. 4—— A. Yes.

Q. Did you explain to her at that time the conversation you had with Mr. Lawrence?

A. Yes, that she would have to have this policy transferred at her first convenience, and I also told her Mr. Lawrence told me as long as the premiums were paid on this policy, being that it was a transaction within the family, this policy would cover.

Q. Would cover whom?

A. Would cover my son-in-law and my daughter.

Q. Did you after that receive any knowledge or information that this automobile, the 1940 Plymouth, had been involved in an accident, Mr. von Borstel? [29] A. Yes, I did.

Q. When, approximately?

A. If I remember correctly, they come up to see us and they looked at the car about the 3rd of October.

Q. When did you hear about the accident?

A. The next or the following morning.

Q. That would be the 4th of October?

A. Yes.

Q. That would be what year? A. 1948.

Q. After that, Mr. von Borstel, did you receive

(Testimony of Amandus A. von Borstel.)

a premium notice from the Farmers Inter Insurance Exchange?

A. Yes, I received my premium notice around the latter part of October.

Q. Did you thereupon pay the Farmers Inter Insurance Exchange in the same manner you had theretofore paid for ten years?

A. Yes, I paid by check.

Q. Exhibit No. 5 is handed to you, Mr. von Borstel; you now hold in your hand Exhibit No. 5. Can you identify the exhibit?

A. Yes. That is the check I paid the two policy premium notices with, due on the 18th and 25th.

Q. What is the date of that check?

A. The date is November 5, 1948.

Q. Would you reverse the check and tell us who endorsed the same? [30]

A. "Pay to the order of The First National Bank of Portland, November 8, 1948, Farmers Insurance Exchange, Farmers Underwriters Association, Attorney-in-Fact."

Q. Does that check bear any identification or markings that would show what it was for?

A. Yes, I wrote here the policy numbers, 2098402 and 2584151, and underscored that for the simple reason——

Mr. Gearin: Just a minute: I object to that, your Honor. The document speaks for itself. Go ahead. Tell why you underscored it.

A. For the simple reason that I got both pre-

(Testimony of Amandus A. von Borstel.)

mium notices close to the same time and I would be paying the two premiums with one check.

Mr. Gearin: If your Honor please, at this time I understand that there has been an order having something to do in connection with a subpoena duces tecum.

The Court: Don't be in a hurry. Wait until the Clerk gets down there to you. He hasn't got there yet. Go ahead with your examination. Move along, Mr. Prendergast.

Q. (By Mr. Prendergast): Along with the check, Exhibit No. 5 which you now hold in your hand, did you return the premium notices to the company with your check? A. I did.

Q. That was your usual practice in paying premiums over these ten years? [31] A. Yes.

Mr. Prendergast: If the Court please, at this time the plaintiff would like to offer in evidence the exhibit marked No. 4 and the exhibit marked No. 5.

Mr. Gearin: We have no objection, your Honor.

The Court: Admitted.

(Policy No. 2098402, Farmers Automobile Inter Insurance Exchange issued to A. von Borstel, with endorsements thereon, heretofore marked for identification, was thereupon received in evidence as Plaintiff's Exhibit No. 4; and

(Check dated November 5, 1948, payable to Farmers Insurance Exchange, in amount \$22.42, signed "Amandus von Borstel," hereto-

(Testimony of Amandus A. von Borstel.)

fore marked for identification, was thereupon received in evidence as Plaintiff's Exhibit No. 5.)

Q. (By Mr. Prendergast): In relation to Exhibit No. 5 which is the check you held in your hand a minute ago, where did you send that check?

A. To the Portland office.

Q. Was that the usual place you sent your premiums? A. Yes.

Q. In sending the premium notice did the company furnish you with a return envelope for the premium? A. Yes. [32]

Q. And you enclosed the check and the premium notice in the envelope and sent it back to Portland?

A. I did.

Q. Why did you pay the premium on the policy on this particular car, the 1940 Plymouth?

Mr. Gearin: Object to that question, your Honor, on the ground and for the reason the testimony is that he paid it. We do not object to that, that he apparently paid it, but the reason for it, I think, is immaterial.

The Court: Overruled. Why did you pay it?

A. I knew the policy was due and they were badly hard up for cash, so to keep this car covered I paid the premium, for the agent told me to send them the premium notice and the insurance would be good and I therefore paid it and thought it was paid.

Q. (By Mr. Prendergast): As to the payment

(Testimony of Amandus A. von Borstel.)

of the premium on the truck, you still had the truck? . A. I still had the truck.

Q. So all the motor vehicles you actually had then were covered by insurance? A. Yes, sir.

Q. Mr. von Borstel, do you know of your own knowledge to what date this check, in paying the premium on the policy which is in evidence here as a part of this case—do you know to what date that paid the premium in full?

A. To May 18th and 25th, 1949. [33]

Q. May 18th, you mean, on the Plymouth?

A. Yes.

Q. And to May 25th, you mean, on the truck?

A. On the truck, to the 25th of May, 1949.

Q. But in relation to the 1940 Plymouth, you had given to your daughter this check, marked Exhibit No. 5 here, paid the premium in full up until May 18, 1949, is that correct?

A. That is correct.

Q. Has that money ever been refunded to you?

A. It has not.

Q. Has anybody of the Farmers Insurance Exchange or anybody else ever offered to refund to you any of that? A. They have not.

Q. Did anybody at any itme ever notify you that you and your daughter and her husband were not covered under this policy?

A. Not until December, 1948, December 29th, if I remember correctly.

Q. I am handing you Exhibit No. 8.

A. Yes.

(Testimony of Amandus A. von Borstel.)

Q. You now have in your hands the document marked Exhibit No. 8. Can you identify this exhibit.

A. Yes. I believe I received it from the company on December—December 29th, I think it was. That might have been the date I got my mail.

Q. You said “I received it.” Would you tell us, so the record [34] will show, what it was you received? What is it you hold in your hand?

A. A letter. It is a letter from the Farmers Insurance Exchange.

Q. To whom?

A. To A. von Borstel, Kent, Oregon.

Q. And that is you? A. That is me.

Q. What is the date of this letter?

A. And they denied any protection being covered under Policy No. 2098402.

Q. Would you please tell us the date of the exhibit? A. December 27, 1948.

Q. As your memory serves you now, you received that letter in due course of mail, is that correct? A. Yes.

Q. You remember receiving such a letter, do you?

A. I received the letter from the company, registered mail.

Q. Had you been served with any papers in an action arising out of this accident, Mr. von Borstel?

A. On December 24th I was served with summons.

Q. You were served on December 24th with summons and complaint in the case of Holm—

(Testimony of Amandus A. von Borstel.)

A. In the case of Holm vs. Sondenaa, Elmer Sondenaa.

Q. And yourself, too; you were named as one of the defendants? A. And myself. [35]

Q. After receiving that what did you do with the complaint and summons?

A. I took it to my attorney, Mr. Brown, in The Dalles.

Q. Mr. Brown of the firm of Brown & Van Vactor, Attorneys in The Dalles?

A. That is correct.

Q. You took that summons and complaint to him? A. Yes.

Mr. Pendergast: If the Court please, at this time I would like to offer in evidence the exhibit marked Plaintiff's Exhibit No. 8 for Identification.

Mr. Gearin: We have no objection.

(Letter dated December 27, 1948, Farmers Insurance Exchange, to Mr. A. von Borstel, Kent, Oregon, heretofore marked for identification, was thereupon received in evidence as Plaintiff's Exhibit No. 8.)

Mr. Pendergast: May I inquire if it is proper at this time to read this exhibit to the jury?

The Court: Don't do that now. Let's get as much of the case in today as we can and you may read the exhibit later.

Mr. Pendergast: Very well, your Honor. I ask that the witness be handed Exhibit No. 7.

(Testimony of Amandus A. von Borstel.)

The Court: Where is this clause you rely on in this policy, Mr. Gearin? [36]

Mr. Gearin: Conditions 17 and 18 on the second page of the policy. I only have a photostatic copy here. They are Conditions No. 17 and No. 18.

The Court: What are the titles?

Mr. Gearin: "Changes" and "Assignments."

The Court: All right. I have it.

Q. (By Mr. Prendergast): You now hold in your hand Exhibit marked No. 7; is that correct?

A. That is correct.

Q. Can you identify this exhibit? First, it is a letter, is it not, Mr. von Borstel?

A. It is a letter from the Farmers Insurance Exchange to Brown & Van Vactor, Attorneys-at-Law, The Dalles, Oregon.

Q. Brown & Van Vactor were your attorneys?

A. Yes, they were.

Q. What is the date of the letter?

A. December 30, 1948.

Q. Have you seen this letter before?

A. Yes, I believe I have a copy of this letter.

Q. That letter, in substance, informs your attorney that the insurance company disclaims any responsibility? A. That is correct.

Q. Any responsibility to defend you under the policy? A. To defend me under the policy.

Mr. Prendergast: May the plaintiff at this time move the [37] receipt in evidence of Exhibit No. 7?

Mr. Gearin: I have no objection.

(Testimony of Amandus A. von Borstel.)

(Letter dated December 30, 1948, Farmers Insurance Exchange, to Brown & Van Vactor, Attorneys-at-Law, The Dalles, Oregon, heretofore marked for identification, was thereupon received in evidence as Plaintiff's Exhibit No. 7.)

Q. (By Mr. Prendergast): As a result of the letter you received from the insurance company, disclaiming any responsibility or, rather, as a result of the letter that the Farmers Insurance Exchange sent to your attorneys, refusing to defend you in the case then pending against you, what did you do in reference to defending yourself, Mr. von Borstel?

A. May I have that again, now?

Q. Did you hire any attorneys to defend you?

A. Yes.

Q. Whom did you hire?

A. I hired King, Wood, Miller and Anderson.

Q. That is a firm of attorneys in Portland?

A. Yes.

Q. And they represented you in the trial of the action brought by Mrs. Holm against you and the Sondenaas?

A. That is correct.

Q. You paid your attorneys yourself?

Mr. Gearin: Objected to, your Honor, on the ground and for [38] the reason that it would be entirely immaterial to the present proceeding.

The Court: Objection sustained.

Q. (By Mr. Prendergast): Did the Farmers Insurance Exchange do anything other than writing you a letter refusing to defend you or to represent

(Testimony of Amandus A. von Borstel.)

you, or disclaiming any liability under this policy?

A. They did nothing further, no.

Q. The accident, I believe you testified, occurred October 3, 1948, Mr. von Borstel. Did anybody from the Farmers Insurance Exchange or representing the Farmers Insurance Exchange, the defendant in this case here, interview you or discuss with you this claim or the accident after the accident?

A. There was a representative from the company come out to see me, sometime in November.

Q. Can you give us the approximate date?

A. No, I couldn't.

Q. Was it early in November or late?

A. It was about near the middle of November.

Q. Near the middle of November?

A. Yes.

Q. Do you know who this gentleman was?

A. I don't recall his name.

Q. He represented himself as representing the Farmers Insurance Exchange? [39] A. Yes.

Q. Did he take a statement from you?

A. He did.

Q. The statement was in relation to this accident? A. It was in relation to the accident.

Q. At that time did you notify this party that you had transferred the car to your daughter?

A. As I recall, that was one reason he come out to see me, and that was to clarify the title of the car, because title was in my daughter's name and the policy was still in my name.

(Testimony of Amandus A. von Borstel.)

Q. He wrote out a statement and you signed the same? A. That is correct.

Q. And you gave it to him at that time?

A. Yes.

Mr. Prendergast: I believe that is all. You may inquire.

Cross-Examination

By Mr. Gearin:

Q. Mr. von Borstel, you saw Mr. Lawrence at The Dalles around the 1st of July?

A. That is correct.

Q. Sometime towards the end of July your daughter came up from Toledo and got the car?

A. Sometime in July, yes.

Q. At the time you saw Agent Lawrence did you tell him when your [40] daughter was going to get the car or when you were going to transfer title? A. Just in the near future.

Q. After the time you transferred title and before the accident did you notify anyone connected with Farmers of the fact that you had transferred your car? A. Only Mr. Lawrence.

Q. And that was in the first part of July?

A. Yes.

Q. That is the only time you saw Mr. Lawrence that year or until after the accident?

A. That is the only time.

Q. Did you notify the Exchange of the fact that there had been an accident?

(Testimony of Amandus A. von Borstel.)

A. I did not.

Q. Did you communicate with any other representative of the Farmers Insurance Exchange from the time you first saw Mr. Lawrence until after the accident? A. I did not.

Q. Did you write a letter or direct any other communication, oral or written, to the Exchange from the time you first saw Mr. Lawrence until after the accident? A. I did not.

Q. Did you advise anyone, either orally or by writing, connected with the Exchange of the fact of this transfer or the fact of the [41] accident before you paid this premium on November 5, 1948?

A. If I understand you correctly, I did.

Q. Whom did you notify?

A. Well, I didn't notify—if I understand the question correctly, it was whether I had discussed it with any of the agents or representatives of the company.

Q. Yes.

A. And I did, with a man that come out in November, the first part of November, to clarify the title of the car.

Q. Well, now, when the man came out to clarify the title of the car, as you say, Mr. von Borstel, was that before or after you had paid the premium?

A. That would be shortly after.

Q. So, at the time you paid the premium you had not advised the Exchange, either orally or by

(Testimony of Amandus A. von Borstel.)

writing, of the fact of the transfer or of the accident? A. No, I hadn't.

Q. Was there any discussion when you saw Agent Lawrence about the first of July about your taking the car over to Toledo and giving it to your daughter there? A. Yes.

Q. Was there any discussion that you had with Agent Lawrence at that time with regard to the question of coverage while your daughter was driving the car and before title was transferred?

A. Yes. [42]

Q. Didn't Mr. Lawrence tell you at that time that the policy would cover your daughter while she was driving the car, before title was transferred?

A. And after the title was transferred.

Q. Didn't Mr. Lawrence tell you, Mr. von Borstel, that your daughter would have to sign a new application? A. Not that I recall.

Q. Shortly after you were served with summons and complaint, which you turned over to Attorney Brown, you went to see Mr. Lawrence again, did you not, with Mr. Brown, your attorney?

A. Will you repeat that question?

Q. After you were served with summons and complaint in this case, you and your attorney, Mr. Brown, went see Agent Lawrence, did you not?

A. Not shortly after, no.

Q. When did you go down to see him, the agent? Can you remember?

A. It was sometime this year.

Q. At that time Mr. Lawrence denied making

(Testimony of Amandus A. von Borstel.)

the statement that the policy would be good as long as the premiums were paid? A. He did.

Mr. Gearin: I wonder if I could have the Bailiff hand the witness Exhibit No. 27, which is Mr. von Borstel's deposition.

(Exhibit No. 27 for Identification was handed to the witness.)

Q. (By Mr. Gearin): Mr. von Borstel, I am calling your attention [43] to Page 7 of that document. Do you recall the occasion when your deposition was taken?

A. I didn't get the question.

Q. You have before you your deposition. You have read and have previously signed your deposition, have you? A. I have.

Q. I will call your attention to the questions on the top of Page 7 and I will ask you if you made those answers to the questions contained therein at the time of your deposition on June 2, 1950, at The Dalles?

“Q. So that I can get your testimony straight and there will be no question about your testimony, Mr. Borstel: I understand that you advised Mr. Lawrence that you were going to give the car to your daughter? A. Yes.

“Q. And you wanted to know about transferring the insurance? A. Yes.

“Q. And he told you that your daughter would have to sign a new application?

“A. Yes.”

(Testimony of Amandus A. von Borstel.)

Did you so testify?

A. Yes, the deposition must be correct.

Q. There was no doubt in your mind, was there, Mr. von Borstel, but what your daughter did have to sign for the policy, was there? [44]

A. Well, I wouldn't know. I don't know the proper procedure to transfer an insurance policy from one name to the other.

Q. There was no doubt in your mind at that time but that, as a result of your conference with Mr. Lawrence, your daughter would have to sign for the policy, was there? A. Yes.

Q. Mr. von Borstel, when you transferred the policy from your first car to your second car, you made a written request to the Exchange, did you not?

A. I can't recall, but I do believe that I talked to their representative, to the Company's representative, in Wasco, George B. Moon.

Q. Do you remember making a writing in connection with it? A. I don't recall it.

Mr. Gearin: I wonder if I could have the Bailiff hand to the witness Exhibit No. 19.

(Exhibit No. 19 handed to the witness.)

Q. (By Mr. Gearin): Does your signature appear on the bottom of that colored piece of paper?

A. Yes, that is correct.

Q. Is your memory now refreshed as to whether or not you made a written request to the company for a change of the policy?

(Testimony of Amandus A. von Borstel.)

A. I still wouldn't know if that would be to the company or to Moon.

Q. Do you remember whether you gave it to Mr. Moon or not? [45] A. I don't recall.

Mr. Gearin: May Exhibit No. 4 be handed to the witness?

(Exhibit No. 4 handed to the witness.)

Q. (By Mr. Gearin): Mr. von Borstel, in reference to the policy, which is Exhibit No. 4 and which you have identified, I call your attention to the rider that is connected to the policy with regard to the transfer of the automobile from the old Plymouth to the new Plymouth. Do you have that in front of you now?

A. I believe, if I have it correct here——

Q. You have the policy in front of you, and the rider? A. Yes.

Q. Mr. von Borstel, do you recall receiving in the mail, from Portland, the policy rider covering the change of the automobile?

A. You mean on this '40?

Q. Yes, the 1940 Plymouth.

A. No, I don't recall.

Q. You don't recall whether you got that? You don't recall whether it came in the mail?

A. No, I wouldn't recall, because that is too long a time.

Q. At the time of the transfer of title your daughter was living with her husband at Toledo?

(Testimony of Amandus A. von Borstel.)

A. She did.

Q. She was not living with you and Mrs. von Borstel? A. No.

Q. Did you live in the town of Kent or out in the country a ways? [46]

A. I lived seven miles south of Kent.

Mr. Gearin: I wonder if we could have introduced in evidence Exhibit No. 19 which the witness has identified?

Mr. Prendergast: May I see what No. 19 is?

Mr. Gearin: No. 19 is Mr. von Borstel's written request to change the automobile over to a 1940 Plymouth.

Mr. Prendergast: I do not see the materiality of it at all. I object to it as incompetent, irrelevant and immaterial to any issue in this case.

The Court: Admitted.

(Memorandum signed by Amandus A. von Borstel, requesting change of Policy No. 2098402 to Plymouth sedan, with copy of acknowledgment of Farmers Automobile Inter Insurance Exchange attached, heretofore marked for identification, was thereupon received in evidence as Defendant's Exhibit No. 19.)

Mr. Gearin: I wonder if we can have admitted into evidence Exhibits 13 and 14 that have been identified, and which consist of Mr. von Borstel's statement and his written report of the accident?

The Court: Is there any objection?

Mr. Prendergast: Do I understand that you are

(Testimony of Amandus A. von Borstel.)

offering the deposition that you have read from?

Mr. Gearin: No. What I am offering now is Mr. von Borstel's [47] statement taken by the adjuster of the Exchange, I think on the 13th of November, 1948, which is Exhibit No. 13, and also the form "Report of Accident" signed by him.

Mr. Prendergast: I have no objection to those.
The Court: Admitted.

(Handwritten statement, dated Kent, Oregon, November 13, 1948, signed by A. von Borstel, heretofore marked for identification, was thereupon received in evidence as Defendant's Exhibit No. 13; and

("Report of Accident" signed by A. von Borstel, heretofore marked for identification, was thereupon received in evidence as Defendant's Exhibit No. 14.)

Mr. Gearin: I have no further questions, your Honor.

Redirect Examination

By Mr. Prendergast:

Q. You testified that when you talked to Mr. Lawrence he informed you that as long as the premiums were paid it was covered for yourself and daughter and family, on this car? A. Yes.

Q. Did you rely upon that statement?

A. I did.

Q. You informed your daughter—— [48]

A. I did.

Q. ——of the same conversation?

(Testimony of Amandus A. von Borstel.)

A. Yes, I did.

Q. You took out no other insurance on this car?

A. No.

Q. And your purpose of going to see Mr. Lawrence was to protect this car insurance?

A. To see that the car was covered with insurance.

Mr. Prendergast: That is all.

The Court: Step down.

(Witness excused.)

The Court: Take the jury upstairs.

Mr. Gearin: We have no objection to the issuance of a subpoena duces tecum.

The Court: All right. I want to talk to your attorneys.

(The jury was thereupon excused from the courtroom.)

The Court: I want to talk to you about this clause. I don't see anything special in this clause that is any different from any other insurance policy.

Mr. Gearin: Your Honor, Section 18 of the "Conditions" reads:

"No assignment of interest under this policy shall bind the Exchange until its consent is endorsed hereon——"

The Court: That is in all insurance policies.

Mr. Gearin: This is the policy of insurance. [49]

The Court: I know.

Mr. Gearin: This is not the regular policy.

The Court: I know, reciprocal.

Mr. Gearin: Yes.

The Court: But you are talking about that clause. That is no different from any other clause.

Mr. Gearin: I think that is the standard clause, your Honor.

The Court: Yes, so it will be treated just as it would be in any other insurance policy. You mean reciprocal insurance should be treated differently, but I am not prepared to agree with that. I treat those just like any other insurance policy.

Mr. Gearin: The important difference, your Honor, is this: Condition 18 deals with financial responsibility and responsibility to the members of the Exchange. It is quite different, separate and apart from the usual policies of casualty insurance. That is our position.

The Court: I just disagree; that is all. I will tell you, I have never tried an insurance case here where there was any word such as "mutual" or "reciprocal" or anything of the sort but what the same argument was made. I will treat this as any other insurance contract. Your point seems to be that until someone changes title down in the Secretary of State's office——

Mr. Gearin: Before she changed title, anyone driving it with the permission of the insured would be an additional insured [50] under the encompassing clause.

The Court: In other words, he didn't need to go to see the man at The Dalles?

Mr. Gearin: That is right.

The Court: If she had not gone to the Secretary of State's office, this thing would have gone on forever?

Mr. Gearin: No, your Honor. Where there are two separate households, more than 200 miles apart, and there are people besides the family driving the car, I don't think that would hold true.

The Court: There was nobody outside the family driving the car?

Mr. Gearin: Two different and separate households.

The Court: Where is that in here?

Mr. Gearin: That is in the case, so far.

The Court: Is that in the policy?

Mr. Gearin: No, that is not in the policy, your Honor, but as a practical matter you can't have a policy for one insured and then have a surrender of control over the car and let it go several counties away to a different household to be used by other people. That is not within the contemplation of the risk when you consider the policy is given to one insured——

The Court: You heard what I said, didn't you?

Mr. Gearin: Yes.

The Court: I have heard counsel for insurance companies say [51] that when they insure your automobile the car is insured.

Mr. Gearin: Your Honor, if we look at the policy and the endorsements and the declaration of named insured, and the automobile, I think you will find that applies to that automobile while owned by the

insured. Item No. 7 of the Declarations reads:

“The named insured is the sole owner of the owner except as herein stated,”

and there is nothing stated. The declaration and representation made was that von Borstel was the sole owner of the automobile. That is the representation made in Item No. 7 of the Declarations.

The Court: Granted it was so at the time the insurance was written. Is there anything in the case so far that shows when the title change was made at the Secretary of State's office? You can take your time to find it. I don't need it right now.

(Recess.)

(The jurors then returned into court and took their places in the jury box.)

Mr. Prendergast: At this time, your Honor, I would like to move the Court to introduce Plaintiff's Exhibit No. 28. I understood from counsel during the recess, in the conversation we had during recess, that defendant is willing to stipulate——

The Court: Get a witness on the stand here while I am listening to this talk.

Mr. Prendergast: Exhibit No. 28 is a copy of the original SR21, the form required by the Secretary of State under the Oregon [52] law relating to financial responsibility, which was filed in the office of the Secretary of State on the 17th day of November, 1948, and signed by “A. Hochmeister” of the Farmers Insurance Exchange or Group, relating to the 1940 automobile; and Counsel has kindly consented that this copy of the record of the Secretary

of State's office may be admitted, which eliminates the necessity of subpoenaing someone from Salem. I offer it in evidence under the stipulation with Counsel that it is a copy of the original filed in the office of the Secretary of State.

The Court: Admitted.

(Copy of "Notice of Policy under Section 115-416 of Oregon Motor Vehicle Safety Responsibility Act of 1943" was thereupon received in evidence and marked Plaintiff's Exhibit No. 28.)

ELMER N. SONDENAA

was thereupon produced as a witness on behalf of Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Prendergast:

Q. Will you state your full name?

A. Elmer Norton Sondenaa.

Q. Where do you live, Mr. Sondenaa?

A. At Toledo, Oregon. [53]

Q. Where did you reside in the year 1948?

A. At Toledo, Oregon.

Q. How long have you resided in Toledo, Oregon? A. For the past four years.

Q. Are you a married man? A. Yes.

Q. Your wife's name?

A. Mrs. Helen Sondenaa.

Q. Helen Sondenaa? A. Yes.

(Testimony of Elmer N. Sondenaa.)

Q. She is the daughter of Mr. A. von Borstel?

A. Yes.

Q. When were you married, Mr. Sondenaa?

A. In 1946.

Q. Can you give us your anniversary date?

A. June 6th.

Q. You have one child, I believe? A. Yes.

Q. When was this child born?

A. September 15th, 1948.

Q. What is your occupation?

A. Boilermaker.

Q. Do you recall the occasion of your father-in-law, Mr. A. von Borstel, giving to your wife a 1940 Plymouth automobile? A. Yes, I do. [54]

Q. Can you tell us when that was given to her?

A. In the latter part of July, 1948.

Q. Tell the jury how that came about?

A. My wife and I left Toledo on a Friday night and drove to Kent, Oregon, with my parents, and at the home of Mr. von Borstel he transferred the title to this 1940 Plymouth to my wife.

Q. On that occasion was anything said about the insurance on the 1940 Plymouth?

A. Yes, there was.

Q. What was said with relation to it?

A. My father-in-law told my wife and myself that he had been to see Mr. Lawrence in The Dalles about the transfer of the insurance policy for the coverage on the car, so it would also be transferred with the ownership, and Mr. Lawrence had told—

Mr. Gearin: That is objected to. We object to

(Testimony of Elmer N. Sondenaa.)

this witness testifying to what Mr. von Borstel said to Mr. Lawrence.

The Court: Overruled. Go on. Tell your story.

A. Mr. Lawrence had told Mr. von Borstel that we would be covered since it was already in the family.

Q. (By Mr. Prendergast): Did Mr. von Borstel then deliver to you and your wife the insurance policy at that time?

A. Yes, together with title to the car.

Q. In other words, he signed the title to the car and gave you the signed title and the insurance policy?

A. Yes. [55]

Mr. Prendergast: I wonder if you could hand the witness Exhibit No. 4?

The Court: You can stipulate on that, that that is the insurance policy?

Mr. Gearin: No question about that, your Honor.

Q. (By Mr. Prendergast): Did you or your wife continue to have this insurance policy in your possession after that date?

A. Yes, we did.

Q. Until when?

A. Until we gave it to our attorney, Mr. Nash.

Q. In other words, you have had it in your possession all the time except when it was in your attorney's possession?

A. Yes.

Q. Did you rely, and did your wife to your knowledge rely, upon the statements that your father-in-law made to you that the insurance policy covered you in the operation of this car?

Mr. Gearin: Object to that, your Honor, to him

(Testimony of Elmer N. Sondenaa.)

being allowed to testify as to what his wife relied on.

The Court: He may answer.

Mr. Prendergast: I will withdraw that.

The Court: All right.

Q. (By Mr. Prendergast): Did you rely upon this statement Mr. von Borstel made to you?

A. Yes, I did.

Q. Did you seek or take out any other insurance protection on [56] the car? A. No.

Q. Did you operate that car with the idea that you were covered in the operation of the car?

A. Yes, as we were fully aware of the financial responsibility laws in this state.

Q. What was your wife's condition, her physical condition, at the time the car was given to you or to her? A. She was pregnant.

Q. Did she operate the car herself, then, after the gift of the car to her, up until the time of the accident?

A. I drove the car with her okeh.

Q. In other words, you were acting as the operator of the car during that period of time?

A. Yes.

Q. Was it difficult for her to get around?

A. Yes, it was.

Q. Was anything done or said about signing this policy? A. I don't remember anything.

Q. Was anything done by you or your wife, to your knowledge, about getting this policy endorsed in any way or changed in any way?

A. Yes. I looked in the phone book in Toledo

(Testimony of Elmer N. Sondenaa.)

for the agency of the Farmers Inter-Auto Insurance, and found none.

Q. You found none listed in the Toledo telephone directory? [57] A. That is right.

Q. How much did you operate this automobile between the date of the gift and the time of the accident? Did you take any extended trips?

A. No, we drove just to and from work.

Q. How far was that?

A. Four to five miles a day.

Q. You drove the car back from Kent to Toledo?

A. Yes.

Q. Did you make another trip over to Kent in this car? A. Yes, we did, in October.

Q. That was after the baby was born?

A. Yes.

Q. You visited the grandparents, Mr. and Mrs. von Borstel? A. Yes.

Q. Then you started home, back to Toledo?

A. Yes.

Q. You were operating the car? A. Yes.

Q. And you had this accident in which Mrs. Holm was injured? A. Yes.

Q. Immediately after the accident, what, if anything, did you do in regard to notifying the Farmers Insurance Exchange that you had had an accident?

A. The accident happened on Sunday and Tuesday following I wrote [58] a registered special delivery letter to George Moon in Wasco.

Q. Where did you get that name?

(Testimony of Elmer N. Sondenaa.)

A. It was on the envelope that contained the insurance policy my father-in-law had given us.

Q. Did you inform Mr. Moon, then, that you had had an accident?

A. Yes, I gave him a full statement of the accident.

Mr. Prendergast: I apologize, your Honor. I do not have the number of the exhibit. It is attached to Mr. Sondenaa's deposition.

Mr. Gearin: It is No. 15.

Mr. Prendergast: Would you please hand the witness Exhibit No. 15.

(Exhibit No. 15 handed to the witness.)

Q. (By Mr. Prendergast): Mr. Sondenaa, you now hold in your hand Exhibit No. 15. Can you identify this exhibit? A. Yes, I can.

Q. What is it?

A. It is the report of the accident I had on October 3rd.

Q. The letter which you just testified you sent to Mr. Moon? A. Yes, it is.

Q. That exhibit is dated what date?

A. October 5, 1948.

Q. Addressed to George B. Moon at Wasco, Oregon? A. Yes.

Q. And signed by yourself? [59] A. Yes.

Q. Do you have the envelope attached thereto?

A. Yes, I have.

Q. It was sent by registered mail?

A. Yes, registered mail.

(Testimony of Elmer N. Sondenaar.)

Q. Does it bear a date on the envelope?

A. October 5, 1948.

Q. This letter refers to Policy No. 2098402.

That was the policy about which you have just testified that was given you by Mr. von Borstel?

A. Yes.

Q. It describes the automobile?

A. Yes.

Q. And you informed Mr. Moon of the details of the accident? A. Yes.

Q. You advised Mr. Moon that you had been unable to get in touch with the company's agent in Toledo or Newport? A. Yes.

Q. After mailing that letter, when did you next see that letter, Mr. Sondenaar?

A. When my deposition was taken.

Q. When it was produced there, who had the letter? A. Mr. Gearin.

Q. Mr. Gearin had it? A. Yes. [60]

Q. After mailing this letter to Mr. Moon did you hear anything further with relation to this accident? A. Yes, about a month later.

Q. That would be approximately November 5th, is that right? A. Or November 10th.

Q. November 10th? A. Yes.

Q. What occurred on November 10th, Mr. Sondenaar?

A. Mr. Patterson from the Claims Office in Eugene came to see me and took a statement of the accident.

Q. At that time, November 10, 1948, did you

(Testimony of Elmer N. Sondenaar.)

notify Mr. Patterson or the company, through Mr. Patterson, as to how this car was acquired by your wife?

A. Yes, we did.

Q. Did you give him the full details as to the title?

A. Yes. He looked at the title.

Q. He looked at the title at that time?

A. Yes.

Q. Did you give Mr. Patterson any correspondence or any documents relating to any claim made against you by reason of this accident?

A. Yes. I gave him letters from Mr. Weinstein and Stephen Parker.

Q. Those are the attorneys who made the claim against you as a result of this accident, is that correct?

A. Yes. [61]

Q. You turned those over to Mr. Patterson, representing the Farmers Insurance Company, or the Farmers Insurance Exchange?

A. Yes.

Q. That was on the 10th of November?

A. Yes.

Q. Did Mr. Patterson have any further conversation with you in relation to defending you or protecting you on those claims?

Mr. Gearin: Objected to, your Honor, on the ground and for the reason that any statement made by Mr. Patterson after the accident could not possibly form a basis for estoppel, with regard to the transfer of the policy, and upon the further ground that it has not been shown that this man, Patterson, an adjuster, had any authority to make any admission which might be binding on the Exchange.

(Testimony of Elmer N. Sondenaa.)

The Court: Answer.

Q. (By Mr. Prendergast): You may answer the question.

Mr. Gearin: May I make this objection general as to all statements and all testimony in regard to the statements of Patterson?

The Court: It is so understood.

A. Will you read the question, please?

(Question read).

A. Yes, he did. I objected to giving Mr. Patterson the correspondence I had received from those attorneys, and he said, inasmuch as the Farmers Insurance Exchange was representing me [62] in the accident, it was my duty, as the insured, to turn over all correspondence to him.

Q. (By Mr. Prendergast): And, based on that, did you turn the correspondence all over to him?

A. Yes, sir, I did.

Q. What next did you hear, Mr. Sondenaa, in regard to this accident? Did you have any further conference with anybody?

A. I received a summons and complaint on Christmas Eve.

Q. That was in the case of Mrs. Holm against you and your wife and your father-in-law?

A. Yes.

Q. And the case was in the Circuit Court of Multnomah County, State of Oregon?

A. Yes, it was.

Q. What did you do with those papers?

(Testimony of Elmer N. Sondenaa.)

A. I sent those to the Insurance Exchange office in Eugene, as instructed by Mr. Patterson.

Mr. Prendergast: At this time, your Honor, may we offer Exhibit 15?

Mr. Gearin: No objection.

(Report of Accident, dated October 5, 1948, signed by Elmer N. Sondenaa, Toledo, Oregon, addressed to Farmers Automobile Insurance, George B. Moon, Wasco, Oregon, heretofore marked for identification, was thereupon [63] received in evidence as Plaintiff's Exhibit No. 15.)

Mr. Prendergast: May I have Exhibit No. 9 handed to the witness.

(Exhibit No. 9 handed to the witness.)

Q. (By Mr. Prendergast): You now have in your hand an exhibit marked No. 9. Is that correct?

A. Yes.

Q. Can you identify this document?

A. Yes, I can.

Q. It is a letter, is it not?

A. Yes. It is a letter from the Farmers Insurance Exchange.

Q. To whom? A. It is addressed to me.

Q. Did you receive the same?

A. I received the same.

Q. The date of the letter is what?

A. December 27, 1948.

Q. And it is in relation to this accident?

A. Yes.

Q. In substance, it advises you the Insurance

(Testimony of Elmer N. Sondenaa.)

Exchange will not defend you in the lawsuit that was filed against you? A. That is right.

Q. Stating that they had no responsibility under this policy? A. That is right. [64]

Mr. Prendergast: I offer Exhibit No. 9 in evidence.

Mr. Gearin: We have no objection.

The Court: Admitted.

(Letter dated December 28, 1948, Farmers Insurance Exchange, to Mr. Elmer Sondenaa, Toledo, Oregon, hereto marked for identification, was thereupon received in evidence as Plaintiff's Exhibit No. 9.)

Q. (By Mr. Prendergast): As a result of the Insurance Exchange's letter and refusal to defend you, did they return to you the complaint and summons? A. Yes, they did.

Q. Then, based on their refusal, what did you do, Mr. Sondenaa?

A. I retained another counsel.

Q. That is, your own attorney? A. Yes.

Q. You retained your own attorney to defend the case. A. Yes.

Q. At your own expense?

Mr. Gearin: Objection, your Honor. It is a question of defense, and this matter of expense, as far as he is concerned, does not bear any relationship to any of the issues.

The Court: Answer Yes or No. At your own expense? A. Yes.

(Testimony of Elmer N. Sondenaa.)

Q. (By Mr. Prendergast): As a result of this lawsuit, this action [65] filed in the Circuit Court of the State of Oregon for Multnomah County, by Louise Holm, a judgment was rendered against you, was it not, Mr. Sondenaa? A. Yes, it was.

Q. You have been handed Exhibit No. 3. You have Exhibit No. 3 in your hand, Mr. Sondenaa. That is the judgment, is it not, a certified copy of the judgment in that case? A. Yes, it is.

Q. Do you recognize that as the judgment that was entered against you?

A. I don't recall having seen this document.

The Court: They will stipulate that.

Mr. Prendergast: Will you stipulate that is a certified copy?

Mr. Gearin: No question at all about the judgment being entered, your Honor.

Mr. Prendergast: We offer Exhibit No. 3 in evidence.

Mr. Gearin: No objection.

The Court: Admitted.

(Copy of Judgment in the Circuit Court of the State of Oregon for the County of Multnomah in cause entitled "Louise Holm, Plaintiff, vs. Elmer N. Sondenaa and Helen L. Sondenaa, husband and wife, and A. Von Borstel, Defendants," No. 185-807, heretofore marked for identification, [66] was thereupon received in evidence as Plaintiff's Exhibit No. 3.)

Q. (By Mr. Prendergast): After this judg-

(Testimony of Elmer N. Sondenaa.)

ment was entered against you, Mr. Sondenaa, did you pay the sum mentioned by the judgment?

A. No, I didn't.

Q. Have you paid any part of the judgment?

A. No.

Q. Are you able to pay any part of the judgment? A. No, I am not.

Q. Is your wife able to assist you in paying any part of the judgment? A. No, she is not.

Q. What property do you have, Mr. Sondenaa?

A. Part of an automobile.

Q. A part interest in an automobile?

A. Yes.

Q. Do you own your own home? A. No.

Q. Do you rent? A. Yes, I do.

Q. Do you have any bank account?

A. Yes, but it is negligible.

Q. Do you have anything with which to satisfy this \$12,000 judgment and interest?

A. No, nothing. [67]

Q. I want to ask you this, Mr. Sondenaa: It may be reiteration, but I don't want to miss this particular point. After receiving the car and the insurance policy—I don't know whether I asked you if you relied upon the fact that that car was insured, in operating the same?

A. Yes, I did. If I had thought for a minute it had not been insured, I would have immediately gotten other insurance.

Mr. Prendergast: May I have the witness handed Exhibit 12?

(Testimony of Elmer N. Sondenaa.)

(Exhibit No. 12 was handed to the witness.)

Q. (By Mr. Prendergast): You now have Exhibit No. 12 in your hands. That is the statement made by you to the Insurance Exchange, is that correct? A. Yes.

Q. In whose handwriting is that, if you know?

A. The handwriting of Mr. Patterson.

Q. Whose signature is appended thereto?

A. It is my own signature.

Q. That is your signature? A. Yes.

Q. What is the date you gave that statement?

A. November 10, 1948.

Q. On that occasion Mr. Patterson wrote out the statement, you read it and signed the same and delivered it to him under date of November 10, 1948? Is that correct? A. Yes. [68]

Q. That is the document you now hold in your hand? A. Yes, it is.

Q. What exhibit number does it bear?

A. Exhibit No. 12.

Mr. Prendergast: The plaintiff offers this Exhibit No. 12 in evidence.

Mr. Gearin: No objection.

The Court: Admitted.

(Handwritten statement, dated November 10, 1948, Toledo, Oregon, signed by Elmer N. Sondenaa, heretofore marked for identification as Defendant's Exhibit No. 12, was thereupon received in evidence as Plaintiff's Exhibit No. 12.)

Mr. Prendergast: You may inquire.

(Testimony of Elmer N. Sondenaa.)

Cross-Examination

By Mr. Gearin:

Q. Mr. Sondenaa, you said you described the automobile when you wrote to Mr. Moon two days after the accident? A. Yes, I did.

Q. At that time your father-in-law had given you a 1937 Chevrolet sedan?

A. No, a 1940 Plymouth.

Q. Was the 1940 Plymouth described in the letter you wrote to [69] Mr. Moon?

Mr. Prendergast: I suggest Counsel give the witness the letter if he is going to inquire as to its contents. That is the best evidence.

Q. (By Mr. Gearin): Mr. Sondenaa, I am handing you Exhibit No. 15 and will ask you to read to the jury that portion of the letter which describes the 1940 Plymouth.

Mr. Prendergast: I suggest you read the whole exhibit. Your Honor, it is very short and I suggest he read the whole exhibit.

A. Shall I read the entire exhibit?

Mr. Gearin: If you will, please.

A. It is to "George B. Moon, Wasco, Oregon, Re Policy #2098402.

"Wish to report an accident involving the insured automobile and four (4) other cars and a Fordson tractor.

"Time—2:00 p.m.—10/3/48.

"Where: 250 ft. west of Welch Road on Loop Highway, which was about three miles east of Gresham.

(Testimony of Elmer N. Sondenaar.)

“Office: Multnomah County Sheriff’s Car No. 12.

“Had rear-end collision with car and driver listed below:

“Car—1937 Chevrolet sedan, 1948 License No. 178,918. Driver: Carl Sigurd Holm, 3205 N.E. 78th Avenue, Portland, Oregon. Driver’s License No. 405,005, expires 1/10/50.” [70]

The rest of this is a report of the details of the accident.

Q. As to how it happened? A. Yes.

Q. Mr. Sondenaar, I believe you testified you and your wife had incurred expense in the defense of this lawsuit brought against you by Mrs. Holm. Is that correct? A. Yes, it is.

Q. Have you paid any money in connection therewith? A. No.

Q. Mr. von Borstel this morning, or this afternoon, testified that he had paid the premiums, that you and your wife were not financially able to pay the premiums; is that correct?

Mr. Prendergast: I don’t think that is a correct statement, your Honor. I don’t think he testified he was financially unable to pay the premiums. He said they were having a hard time financially and it was easier for him to pay than the boy.

Q. (By Mr. Gearin): Were you, during this period of time, able to pay the premiums?

A. I had no extra money of my own.

Q. You say you looked in the phone book to see whether or not there was an agent in Toledo or Newport? A. Yes, I did.

(Testimony of Elmer N. Sondena.)

Q. Did you find an agent of the Farmers Insurance Exchange in Newport? [71]

A. Since that time I have.

Q. I am handing you Exhibit No. 10 and will ask you if you observed Page 47 of this telephone book, which is marked "December, 1947"?

Did you see that page when you looked in the phone book? A. Yes, I did.

Q. I am handing you Defendant's Exhibit No. 11, the phone book for December, 1948, and will ask you if you have seen Page 49 of that phone book?

A. Yes. That is their Corvallis address.

Q. I call your attention to the listing "Farmers Insurance, Gilkey Insurance Agency," which gives a Newport address and telephone number.

A. Yes, it is here.

Q. Did you call Judge Gilkey?

A. My wife found a number in Newport.

Q. Were you there at that time?

A. No, I wasn't.

Q. Why did your wife call the number in Newport? A. To report the accident we had.

Q. Wasn't your wife trying to call the insurance company to have the policy transferred?

A. No, we had had the accident and we wanted to report the accident.

Q. Did you ever have any conversation with Mr. Lawrence [72] A. No.

Q. The first contact you had with any representative of the Farmers Insurance Exchange was on

(Testimony of Elmer N. Sondenaa.)

November 10, 1948, when Mr. Patterson came to see you. Is that correct? A. Yes.

Mr. Gearin: At this time we offer Exhibits 10 and 11 in evidence.

Mr. Prendergast: I don't know what relevancy they have.

The Court: Are those Corvallis phone books?

Mr. Gearin: Corvallis, Toledo and Newport.

The Court: Is that the same phone book that they have at Toledo?

Mr. Gearin: That is correct. It has all Toledo numbers.

The Court: I know it, but is that phone book that a subscriber had in Toledo?

Mr. Gearin: That is correct, your Honor.

The Court: Is that the same phone book?

A. Yes, it is.

Mr. Gearin: How far is Toledo from Newport?

A. Nine miles.

The Court: Admitted.

(Telephone Directory, Corvallis and vicinity, December, 1947; and Telephone Directory Corvallis and vicinity, December, 1948, heretofore marked for identification, were [73] thereupon marked Defendant's Exhibits Nos. 10 and 11, respectively.)

Q. (By Mr. Gearin): Did not Mr. von Borstel tell you that your wife could have the policy transferred by seeing the local agent in the vicinity where you lived?

(Testimony of Elmer N. Sondenaa.)

A. No, not that I recall. He said that my wife would sometime have to sign for the policy.

Q. Isn't it a fact, as soon as you got back to Toledo, you tried to see an agent to have the policy transferred?

A. Will you clarify that question?

Q. Did you know, at the time Mr. von Borstel, your father-in-law, gave you the policy that your wife would have to sign a new application?

A. No.

Q. The statement you gave to Mr. Patterson on November 10, 1948, was correct, was it not?

A. Yes, it was.

Q. He wrote it out and you signed it?

A. Yes.

Q. You had an opportunity to read it and you did read it before you signed it?

A. Yes, I did.

Mr. Gearin: I wonder if the Bailiff could hand the witness Exhibit No. 25.

(Exhibit No. 25 was handed to the witness.)

Q. (By Mr. Gearin): Do you recall being at Toledo on May 31st, when I took your deposition, Mr. Sondenaa? A. Yes, I do.

Q. I call your attention to the questions and answers contained on Page 4 of your deposition. Starting with the third question. I will ask you if you gave these answers to these questions:

“Q. And after you and your wife came back to Toledo with the automobile, what, if anything, did either you or your wife do in connection with hav-

(Testimony of Elmer N. Sondena.)

ing the insurance transferred or signing any papers in connection with the insurance?

“A. Would you repeat that?

“(Whereupon the last question was read as above recorded.)

“A. Oh, we talked about it between ourselves and decided there was no rush to get other insurance or get this insurance transferred, because Mr. Lawrence said the car was still covered regardless of who was driving.

“Q. In other words, nothing was done by either *or your* wife during the period of time the premium was in force, is that your understanding?

“A. Oh, we made some effort to contact an agent.”

When you tried to contact an agent, was that to report the accident or to try to have the insurance transferred?

A. That was to report the accident. [75]

Q. Where were you taken after the accident? Did you go right to Toledo from the accident?

A. No. My wife went to the Providence Hospital for a few hours, and then we went to a hotel, and we did have some friends from Toledo come after us.

Q. Then you wrote Mr. Moon on Tuesday?

A. Yes.

Q. So you tried to find an agent, then, on Monday, is that correct? A. Yes, that is right.

Q. This testimony we have gone over, appearing on Page 4 of your deposition, did you make those

(Testimony of Elmer N. Sondenaa.)

answers to those questions no May 31st, this year, at Toledo? A. Yes, I did.

Q. And it is your understanding your wife was not to sign anything in connection with the transfer of this insurance? A. I don't understand that.

Q. What is your understanding as to whether or not your wife was or was not to sign any new application for this insurance?

A. My understanding was, as Mr. Lawrence had told my father-in-law, that sometime in the future she might have to sign for a new policy.

Q. That is what Mr. Von Borstel told you, is that correct? A. Yes.

Q. He told you that Mr. Lawrence said sometime your wife might [76] have to sign for the insurance, is that your best memory?

A. She might have to sign the policy itself.

Q. Yes.

A. That is my best remembrance.

Q. At any time that your wife had the policy did you read it? A. Yes.

Q. Before the accident? A. Yes, I did.

Q. At any time during that period of time that you had the car and the policy, and before the accident, did you ever try to see the agent at Toledo or anywhere with respect to having the policy transferred?

A. I don't know quite how to answer that.

Q. Well, your wife did not execute any document in connection with the insurance before the accident, did she? A. No.

(Testimony of Elmer N. Sondenaa.)

Q. Did either you or your wife, during the period of time the—before the accident, attempt to have that insurance transferred?

A. We looked for an agent, half-heartedly.

Mr. Gearin: That is all.

Redirect Examination

By Mr. Prendergast:

Q. What do you mean by “half-heartedly”? Did you believe the insurance was in effect without going to an agent, or did you [77] have to go to an agent before it became effective to cover?

A. We knew the insurance was in effect, because Mr. Lawrence had said so.

Q. Did you believe that there was any rush?

The Court: Step down. That is all. That has all been covered.

(Witness excused.)

Mr. Prendergast: I have one other witness by whom I would like to identify this exhibit.

The Court: Maybe he will stipulate with you on it.

Mr. Prendergast: I will do that with the next witness, your Honor.

Mr. Gearin: We have no objection to the introduction and reception in evidence of Exhibit No. 6

Mr. Prendergast: I offer the same.

The Court: Admitted.

(Carbon copy of letter dated December 31, 1948, Farmers Insurance Exchange by James N. Tomlin to Elmer N. Sondenaa and Helen L.

(Testimony of Elmer N. Sondenaa.)

Sondenaa, Toledo, Oregon, heretofore marked for identification, was thereupon received in evidence as Plaintiff's Exhibit No. 6.)

The Court: Is this your last witness?

Mr. Prendergast: I have one other witness. [78]

The Court: Who?

Mr. Prendergast: An expert.

The Court: An expert on what?

HELEN L. SONDENAA

was thereupon produced as a witness on behalf of Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Prendergast:

Q. Your name is Helen L. Sondenaa?

A. Yes.

Q. You are the wife of Elmer N. Sondenaa who just testified? A. Yes.

Q. You are daughter of Mr. A. von Borstel?

A. That is right.

Q. What is your age, Mrs. Sondenaa?

A. Twenty-seven.

Q. You lived at home in Kent, Oregon, until what date? A. September 5, 1944, I believe.

Q. Then where did you go?

A. To Corvallis.

Q. To Oregon State College? A. Yes.

Q. Then you and Mr. Sondenaa were married when? A. June 6, 1944.

(Testimony of Helen L. Sondenaa.)

Q. Where were you married?

A. Pardon me?

Q. Where were you married?

A. In The Dalles.

Q. After your marriage did you move to Toledo?

A. Well, we moved to Portland for eleven months and then went to Toledo.

Q. You have lived in Toledo since?

A. Yes.

Q. Your occupation is that of housewife and mother—of course, they are both the same.

A. Yes, they are.

Q. Mrs. Sondenaa, your father gave you a 1940 Plymouth? A. Yes.

Q. Is that right? A. Yes.

Q. Can you tell us approximately when that was? A. About the 26th of July in 1948.

Q. Before you received this gift from your father and mother, did they talk to you about giving that car to you? A. Yes.

Q. Did you go up to Kent for the purpose of getting the car? A. That is right. [80]

Q. When you went up there with your husband you knew you were going to get the car?

A. Yes.

Q. Was that before you had the baby?

A. Yes.

Q. Approximately how long before the baby came? A. About two or three months.

Q. What was your condition at that time?

A. Wasn't able to get around very well.

(Testimony of Helen L. Sondenaar.)

Q. How long did you visit at your home when you went up to get this car?

A. We went up on a Saturday and came back on Sunday.

Q. Did your father at that time sign the title to the Plymouth for the purpose of the transfer?

A. Yes.

Q. And he gave you the signed title?

A. That is right.

Q. In other words, the title was issued by the Secretary of State and he simply endorsed it and gave it to you?

A. Yes.

Q. At some time later, I believe the 29th of July, you sent that in for a new title in your name?

A. Yes.

Q. You sent that in to the Secretary of State?

A. Yes. [81]

Q. At the same time your father gave you the title to this car and gave you possession of the Plymouth did he give you an insurance policy?

A. He did.

Q. The insurance policy that is involved in this litigation?

A. That is right.

Q. At that time did your father tell you anything with regard to this insurance policy?

A. He told me he had seen Mr. Lawrence in The Dalles and Mr. Lawrence said——

The Court: Wait a minute.

Mr. Gearin: I will object to what Mr. Lawrence said, your Honor, and object to this line of testimony. What Mr. von Borstel told this witness that Mr. Lawrence had said is hearsay.

(Testimony of Helen L. Sondenaar.)

The Court: Objection overruled. What did he tell you? Go ahead.

A. My father told me that Mr. Lawrence said I should have my signature affixed to the policy in the area in which I was living, but there was no rush for it because I was a member of the family and the policy was good.

Q. (By Mr. Prendergast): Did you rely upon that statement that your father made?

A. Yes, I did.

Q. Believing that Mr. Lawrence said that?

A. That is right. [82]

Q. Did you get any other insurance on the car?

A. No, we didn't; because of what Mr. Lawrence said we felt the policy was good.

Q. Mrs. Sondenaar, did your husband drive the car back to Toledo on Sunday?

A. Yes, he did.

Q. Were you able to drive after that, until the time the baby came? A. I didn't drive.

Q. Your husband drove the car for the family, is that right? A. That is right.

Q. After the baby came, you went up and showed the baby to its grandparents? A. Yes.

Q. And that was the time you had the accident?

A. Yes.

Q. You were in the car at the time?

A. Yes, I was.

Q. Were you and the baby hurt?

Mr. Gearin: That is objected to.

(Testimony of Helen L. Sondenaar.)

The Court: It doesn't make any difference.

Mr. Prendergast: I will withdraw the question.

Q. Anyway, the accident happened on Sunday?

A. Yes.

Q. After the accident you were taken to the hospital? [83]

A. Yes.

Q. When, if you know, did your husband make a report of this accident?

A. It happened that the accident was on a Sunday, and on Tuesday he mailed the report to the insurance company.

Q. Before mailing the report to Mr. Moon, did you or he attempt to locate anybody down there at the Coast representing the insurance company?

A. Yes, we did.

Q. With any success? A. No.

Q. What did you do in regard to that?

A. I called up a man downtown that I thought was the agent for the Farmers Insurance.

Q. What made you think he was an agent for the Farmers Insurance?

A. I had seen a sign in his window, but he advised me that was another insurance company.

Q. Another Farmers Insurance? A. Yes.

Q. That man was at a floral shop?

A. Yes, he was.

Q. Did he give you any information about getting in touch with the right insurance company?

A. He gave me a party to call in Newport, and the operator in Newport told me the phone had been taken from that office. [84]

Q. Then your husband wrote to Mr. Moon and reported the accident? A. Yes, he did.

(Testimony of Helen L. Sondenaa.)

Q. After that date, which would be approximately the 5th of October, 1948, did you confer with anybody from the Farmers Insurance Exchange with regard to this accident?

A. After that date?

Q. Yes.

A. Mr. Patterson came to call on us.

Q. That would be approximately when?

A. The 10th of November, I believe.

Q. At that time did you talk to Mr. Patterson about the accident?

A. Yes, we did.

Q. Did you notify him as to where title to the car was?

A. Yes.

Q. In whose name title was carried? In whose name title was registered?

A. Yes.

Q. Did you tell him how you got the car?

A. Yes.

Q. Did you show him the insurance policy?

A. Yes, he looked at the policy.

Q. Did you deliver to him any document or letters or demands made upon you or Mr. Sondenaa?

A. He took the correspondence from us and said his company [85] represented us and we would have these back.

Q. You relied upon his statement and delivered to him all these things?

A. Yes.

Q. Except the policy which you retained?

A. We kept that.

Q. Your husband gave a statement to Mr. Pat-

(Testimony of Helen L. Sondenaa.)

terson on November 10th. Did he come back later on the 18th and take a statement from you?

A. Yes, he did. He had forgotten to take any statement and he returned.

Q. He was there twice? A. Yes.

Q. Both times he talked to you and Mr. Sondenaa?

A. Just the first time, but Mr. Sondenaa had been at work the second time Mr. Patterson came.

Q. Did you give Mr. Patterson all the information he requested? A. Yes.

Q. And all the documents he requested?

A. Yes.

Q. And you told him all the truth and the whole story? A. That is right.

Q. He told you the Farmers Insurance Exchange was representing you in the accident?

A. He did. [86]

Q. Did you report that information to your father, tell him as you went along about the developments?

A. Well, we kept in contact with one another.

Q. Did he advise you he had paid the premium for another six months?

Mr. Gearin: Objected to as immaterial.

The Court: She may answer.

Q. (By Mr. Prendergast): Did your father advise you he had paid the premium for another six months? A. Yes, he did.

Q. You were made a party defendant in this

(Testimony of Helen L. Sondenaar.)

lawsuit brought by Mrs. Holm against you and your husband and your father? A. Yes.

Q. The insurance company papers were sent by you to the insurance company, the same as your husband's? A. Yes.

Q. They refused them and sent them back?

A. Yes; that is right.

Q. And advised you they would not represent you or defend you in this action?

A. That is right.

Q. You thereupon hired your own attorney, is that right? A. Yes.

Q. He defended you successfully, as far as that particular litigation was concerned; no judgment was rendered against you [87] personally, but judgment was rendered against your husband?

A. That is right.

Q. Did your husband have anything with which to pay a \$12,000 judgment?

The Court: That is cumulative. It won't be denied.

Mr. Prendergast: That is all.

Cross-Examination

By Mr. Gearin:

Q. The statement you gave to Mr. Patterson on November 18th was the truth, was it not?

A. Yes.

Q. When you got this car, your father told you you should sign a new application for the policy?

A. He did not.

Q. He said you would have to sign for it?

A. He said I would have to sign for it. As I understood, I affixed my signature to the policy.

(Testimony of Helen L. Sondenaa.)

Q. What did you do with regard to doing that between the time you got the car in the latter part of July and the date of the accident, which occurred in October?

A. I tried to call and find the Farmers representative, but I wasn't able to.

Q. Did you call Judge Gilkey in Newport?

A. No. [88

Q. Did you call the agent in Corvallis?

A. No.

Q. Were you able to drive the car when you got back from the trip to Kent in July?

A. I didn't drive at all.

Q. Did you ask your husband to take the car nine miles over to Newport to see Judge Gilkey about the insurance? A. No.

Q. Did your husband drive over to Newport to see about the insurance? A. No.

Q. You knew there was an office in Newport, did you not? A. I did not.

Q. Did you look in the phone book to see whether or not there was an office in Newport? A. No.

Q. The company you got in Toledo was the State Farm Mutual, was it not? A. I think so.

Q. You knew that the Farmers Insurance Exchange had a big office in Portland?

A. No, I didn't.

Q. Did you check to see whether or not they had an office in Portland? A. No, sir. [89]

Q. Did you write to Mr. Lawrence and Mr. Moon and ask where the agent was?

A. No.

(Testimony of Helen L. Sondenaar.)

Q. Did you talk to Mr. Lawrence at any time before the accident? A. No, I didn't.

Q. Did you talk to or discuss with any representatives of Farmers any features of this insurance question prior to the accident?

A. Prior to the accident?

Q. Yes. A. No.

Q. The only one of Farmers' representatives that you had any contact with at all has been Mr. Patterson? A. That is right.

Q. The policy has been in your possession all the time?

A. It was in my possession after I took the car.

Q. And then from that time on until your husband gave it to Attorney Nash? A. Yes.

Q. Did you read that policy at any time before the accident?

A. I looked it over; I looked it through.

Q. When your husband wrote to Mr. Moon, did he tell him that title had been transferred, do you know? A. I don't know.

Mr. Gearin: At this time, your Honor, we would like to offer in evidence Exhibits 16 and 17, the statements of the witness, [90] which have been already identified.

Mr. Prendergast: No objection.

The Court: Admitted.

(Statement signed by Helen L. Sondenaar, dated Toledo, Oregon, November 18, 1948; and Statement signed by Helen L. Sondenaar, To-

(Testimony of Helen L. Sondenaar.)

ledo, Oregon, November 18, 1948, heretofore marked for identification, were thereupon received in evidence as Defendant's Exhibits 16 and 17, respectively.)

Mr. Gearin: I think that is all.

(Witness excused.)

Mr. Prendergast: We are ready to rest, your Honor, save and except for a witness on attorneys' fees.

The Court: You can put him on later. [91]

Defendant's Testimony

WILLIAM LAWRENCE

was thereupon produced at a witness on behalf of Defendant and, being first duly sworn, was examined and testified at follows:

Direct Examination

By Mr. Gearin:

Q. Your name is William Lawrence?

A. That is right.

Q. Where do you live?

A. The Dalles, Oregon.

Q. What is your occupation?

A. I am District Agent for the Farmers Insurance Group.

The Court: What is the title?

A. District Agent for the Farmers Insurance Group.

(Testimony of William Lawrence.)

The Court: What does that mean?

A. That means that I represent the Farmers Insurance Group, as agent, to solicit business and accept premium money on new business or old business that is being renewed.

The Court: For what district?

A. District 12, Oregon.

The Court: How many others are there, do you know?

A. No, I don't.

The Court: Do they have a General Agent or anybody by that title in Oregon?

A. I can't answer that. [92]

The Court: You don't know that? Whom do you report to?

A. I have a sales supervisor that I report to.

The Court: How long have you been District Agent?

A. Since March 15, 1948.

The Court: Go ahead. Did you state what your district was?

A. District 12.

The Court: What territory is that?

A. That comprises Wasco and Sherman Counties.

The Court: Those two counties?

A. Yes.

Q. (By Mr. Gearin): Mr. Lawrence, do you know Mr. A. von Borstel? A. I do.

Q. Did you see him any time in the spring or summer of 1948?

(Testimony of William Lawrence.)

A. Yes, in the early summer of 1948.

Q. Can you remember the approximate date?

A. No; probably in June.

Q. Where did you see Mr. von Borstel and under what circumstances?

A. He came into my office, in a used car sales building in The Dalles.

Q. How big an office did you have?

A. It was about 10 by 10.

The Court: Is that your sole and exclusive business, being District Agent for this company?

A. Yes.

Q. (By Mr. Gearin): What was the meeting with Mr. von Borstel about? [93]

A. Mr. von Borstel came in to discuss the possibility of changing his car or giving his car to his daughter, and questions pertaining to the insurance in the event he did make the change.

Q. What did Mr. von Borstel say to you and what did you say to Mr. von Borstel?

A. Mr. von Borstel asked me about the possibility of turning this car over to his daughter, if she came up to get it, and I told him if she were to take the car and if he was to retain possession of the title that the car would be insured under his policy and he could continue to pay premiums, and the insurance would be good, if she were the driver with his permission.

There was some discussion also about the possibility of him taking the car to them, which was in Western Oregon and which I understood at the time

(Testimony of William Lawrence.)

would be in Western Oregon in the neighborhood of Toledo. I told him in that case that the agent down here—as I recall, I stated the agent's office in Corvallis was, I knew, on Monroe Street, between 2nd and 3rd Streets, but I didn't know the agent's name.

Q. Was there anything said about transferring the title to the automobile, with regard to the insurance?

A. Yes. I told Mr. von Borstel that if the title was changed the signature of the applicant—the name of the new applicant would have to appear on the application form, and that the insurance did not go with the car otherwise.

Q. Did he advise you whether or not his daughter was married? [94]

A. Yes, he did.

Q. Did he tell you his daughter's married name?

A. Not that I recall. I wouldn't know for sure.

Q. Did Mr. von Borstel say whether or not he intended to transfer the title or whether he was just thinking about it?

A. I believe he said he was intending to transfer title. However, that wasn't definite.

Q. When did you first know the car had been transferred?

A. I had no definite knowledge of it until after I heard of the accident.

Q. Do you recall when you heard of the accident?

A. My first knowledge of the accident was when one of the company's adjusters came into my office

(Testimony of William Lawrence.)

on his way to Mr. von Borstel's residence to take a statement.

Q. Was that Mr. Chuck Daly?

A. It was Mr. Daly; yes, sir.

Q. I am now handing you Exhibit 15, also Exhibit No. 22, and will ask you if you can identify Exhibit 22 with reference to Exhibit 15? What is Exhibit 22?

A. Exhibit No. 22 is a quiz form that we use for correspondence between the District Office and the agent's office and the Portland Branch Office.

Q. Is that in your handwriting and does it bear your signature? A. It is.

Q. Do you recall the occasion for writing that memo? [95]

A. Not very clearly, because the names involved on this enclosure, Exhibit 15, and also which I have written at the top and listed as the insured, were not known to me at that time. I wasn't able to identify them.

Q. Do you recall having received or having seen Exhibit 15? A. Yes.

Q. Under what circumstances did you first see it?

A. I received it in the mail.

Q. From whom, do you know?

A. Mr. Moon.

Q. What did you do with Exhibit 15?

A. It was attached to this Exhibit 22 and sent in to Portland.

Q. At the time you received Exhibit 15, did you know who Mr. Sondenaa was? A. No.

(Testimony of William Lawrence.)

Mr. Gearin: May we have Exhibit 22 received in evidence?

Mr. Prendergast: No objection.

The Court: Admitted.

(Copy of Interoffice Memorandum dated October 8, 1948, from Bill Lawrence to Northwest Branch, Farmers Automobile Insurance Exchange, heretofore marked for identification, was thereupon received in evidence as Defendant's Exhibit 22.)

Mr. Gearin: You may cross-examine. [96]

Cross-Examination

By Mr. Prendergast:

Q. Why do insurance policies of the Farmers Group have numbers on them?

A. I think that insurance policies of all insurance companies have numbers on them, to identify them, for identification or filing purposes.

Q. You spoke of being the District Representative of the Farmers Group. Is there any difference between the Farmers Group and the Farmers Inter Insurance Exchange and the Farmers Insurance Exchange?

A. Yes. The Farmers Insurance Exchange, along with the Truck Insurance Exchange and the Fire Insurance Exchange comprise the Farmers Insurance Group.

Q. The Group is the family name?

A. I would assume that, yes.

(Testimony of William Lawrence.)

Q. The Farmers Insurance Group, that applies to all companies? A. Yes.

Q. They are all combined together—made up of the Truck Insurance Exchange and the Farmers Insurance Exchange and the Farmers Inter Insurance Exchange?

A. No, the Farmers Insurance Exchange, the Truck Insurance Exchange and the Fire Insurance Exchange. I cannot give you the date, but sometime in the not-too-distant past the Farmers Inter Insurance Exchange was dropped; that title was dropped, the [97] “Inter” part of the title was dropped.

Q. So it is now called the Farmers Insurance Exchange? A. Yes.

Q. The Farmers Inter Insurance Exchange is the same company, but has changed its name?

A. That is correct, as far as I know.

Mr. Prendergast: Would you hand the witness Exhibit No. 4, the policy?

(Exhibit No. 4 handed to the witness.)

Q. I think the slip attached to that policy, the second rider as it is called, is a note saying that that policy is a non-assessable policy, is that correct?

A. Yes. “The within-described policy is hereby re-issued and declared to be non-assessable.”

Q. Was that about the time the company changed from the “Farmers Inter Insurance Exchange” to the “Farmers Insurance Exchange”?

A. I don’t know that. That is prior to my association with the company.

Q. Is the financial responsibility on a non- assess-

(Testimony of William Lawrence.)

able policy different than the financial responsibility on an assessable policy?

A. I couldn't answer that, either.

Q. You don't know? A. No.

Q. Mr. Lawrence, before this particular day, which you say was [98] in the summer of 1948, when Mr. von Borstel walked into your 10 by 10 office, you had never seen the gentleman before, had you?

A. Not to know him as Mr. von Borstel, no.

Q. So, as far as business was concerned, he was a complete stranger to you?

A. That is correct.

Q. When he came into your office and introduced himself as Mr. A. von Borstel, did he identify himself as being a policyholder in the Farmers?

A. Yes.

Q. Did he tell you the number of his policy?

A. I couldn't say whether he did or not.

Q. Did he show you the policy?

A. He didn't have the policy with him that I know of.

Q. You have a master list of policy-holders?

A. Yes, we have a folder filing system.

Q. Right there in the District Office?

A. Yes.

Q. So, by any number that is given you, you can tell whether he was a policy-holder, if he gave you the number of the policy?

A. I could look it up under his name in the alphabetical file, and that number should be attached to the folder and the policy.

(Testimony of William Lawrence.)

Q. Did you look it up at that time?

A. I think so. [99]

Q. Did you ascertain how many insurance policies he held with the Farmers?

A. I knew he had more than one.

Q. How did you know that?

A. Because they were in the file, besides the other one appearing under his name.

Q. So, when he came in, you did look up the file?

A. That is right.

Q. He explained to you the reason that he came was for the purpose of discussing with you the coverage of an automobile he was about to give his daughter? A. Yes.

Q. He did not discuss with you how he was going to transfer title? He discussed the insurance on the automobile, didn't he?

A. I think that is the reason he came into the office.

Q. In other words, he did not ask you how he could transfer title to the car?

A. No, he didn't ask me how he could transfer title to the car.

Q. He asked you how to protect the car?

A. That is right.

Q. So that the purpose, so far as you knew, of Mr. von Borstel coming into your office on that day was to get information from you as to how he would protect his automobile? A. That is correct.

Q. And he said he was going to give this car to his daughter? [100] A. Yes.

(Testimony of William Lawrence.)

Q. Did he say when he first came he was going to transfer title or sell the car?

A. As I recall it, the subject of transferring title was not mentioned.

Q. Did you explain to him—when you said it required his daughter's endorsement on the application, did you give him an application to make that endorsement on? A. No, I didn't.

Q. Did you have those forms in the office?

A. Yes.

Q. Why didn't you give him one?

A. Because his daughter's signature would be the one I would have to get and she wasn't there.

Q. Couldn't he have taken the form for her to sign? A. That is not our policy.

Q. You mean everybody has to come to the office of Farmers before they can do anything in regard to a policy?

A. The agent makes out the application form.

Q. Isn't it true with Farmers in all respects? The agent is the only one that can make out anything in regard to an application for a change of policy? A. Yes, sir.

Q. No policy-holder in Farmers has the right to make an application; you have to go to an agent to have that done, is that right? [101]

A. There are exceptions, I believe.

Q. There are exceptions?

A. A policy-holder might write a letter—

Q. That would be considered an application?

A. —requesting a change of one car from an-

(Testimony of William Lawrence.)

other, and that change can be made without the insured's signature.

Q. You looked up Mr. von Borstel's file and you found how he had made two applications to the Farmers to change policies? A. I don't know.

Q. You don't know?

A. I don't know for sure, no. I do know he has changed cars in the past, yes.

Q. Did he have some agent make a formal application on those? A. I would presume so, yes.

Q. You just presume so; you don't know?

A. Mr. von Borstel could have a change of car made; that would be included in this exhibit.

Q. Could a policy of insurance include another insured on the policy? A. No.

Q. In other words, if a woman owned an automobile and wanted her husband's name on the policy, could an agent make that change?

A. That would not be necessary.

Q. Why?

A. Because a spouse is automatically covered under the policy, as [102] I understand it.

Q. Suppose a boy came home from college and the father wanted his car protected, could an agent make that change, add the boy's name to the policy?

A. Under the provisions of the policy if the boy was driving with permission, there would be coverage.

Q. You are familiar with these policies?

A. Relatively.

Q. Is there anything in the policy that makes

(Testimony of William Lawrence.)

any provision for changing the policy upon transferring title to the car? Is there any provision anywhere in this policy with regard to transferring title of the car? A car covered under that policy?

A. I don't know. I don't think so.

Q. You have never found such a provision, have you? When a fellow sells a car, what happens to the policy? It does not say the policy is cancelled, does it? There is no provision for cancellation upon the sale of a car under this policy, is there?

A. Not that I know of.

Q. You did not give Mr. von Borstel any form? Did you tell him he would have to bring his daughter in to an agent and sign it?

A. Yes.

Q. He said if the daughter came up, she would come into The Dalles office?

A. That is right.

Q. If the father took the car down to Toledo, they could go in to [103] the agent at Corvallis. How far is Corvallis from Toledo, do you know?

A. About 45 miles, 50 miles.

Q. Did you tell the father that if the title remained as it was the daughter would be covered in operating that car?

A. I think I did.

Q. And the son-in-law?

A. Yes.

Q. Did Mr. von Borstel tell you that he had just bought a new automobile?

A. I think he did; either that he had just bought it or was buying it.

Q. Did he tell you why he was giving the car away, the 1940 Plymouth? Did he tell you why he was giving it away?

(Testimony of William Lawrence.)

A. That he wanted his daughter to have it.

Q. And that he had bought a new automobile himself? A. Yes.

Q. Did he tell you or inform you where the car was at the time he was talking to you?

A. I couldn't say for sure, although I have the impression that it was at home, in Sherman County.

Q. That he had it? A. That he had it.

Q. He didn't tell you that it was across the street being worked on, did he? [104]

A. I can't recall.

Q. Did he ask anything about coverage on the new automobile he was buying?

A. I don't know that for sure.

Q. You had nothing to do with the accident in any respect, other than the fact you received through the mail this Exhibit 15?

A. That is right.

Q. How did you happen to get it?

A. How did I happen to get it?

Q. Yes. A. Mr. Moon sent it to me.

Q. Mr. Moon received it and sent it to you?

A. Yes.

Q. Who is Mr. Moon?

A. Mr. Moon is a business man in Wasco. He formerly had been the Farmers Insurance agent.

Q. Was he under you as District Manager?

The Court: Just a minute. What title is that?

Mr. Prendergast: District Agent.

The Court: Is that what he said?

Mr. Prendergast: I believe that is his testimony.

(Testimony of William Lawrence.)

Q. Is that correct? You are the District Agent?

A. District Agent is what I said, yes.

Q. The District Agent for the Farmers Insurance Group, you testified? [105] A. Yes.

Q. Did Mr. Moon know you were the District Agent for the Farmers Insurance Group and send you the letter reporting the accident?

A. That is right.

Q. You then appended it to the form and sent it to the Portland District Office—you call that the District Office?

A. Yes, the Northwest Branch Office. I suppose it would be properly referred to as the Portland Area.

Q. This Exhibit 22, this form, by which you transmitted the letter sent by Mr. Moon, that was mailed by you, was it not?

A. Yes, that would be included in my mail to the company.

Q. You are reasonably sure that in due course the company received that? A. Yes.

Mr. Prendergast: That is all.

Mr. Gearin: Nothing further.

(Witness excused.) [106]

J. H. PORTH

was thereupon produced as a witness on behalf of Defendant and, being first duly sworn, was examined and testified at follows:

Direct Examination

By Mr. Gearin:

Q. Your name is J. H. Porth? A. Yes.

Q. What is your occupation?

A. Assistant Branch Claims Manager for the Farmers Insurance Exchange.

Q. How long have you been connected with the Exchange? A. Fourteen years.

Q. What was your capacity and your position in the fall of 1948?

A. The same as it is now, Assistant Branch Claims Manager.

Mr. Gearin: I wonder if the witness could be handed Exhibits 15 and 22.

(Exhibits 15 and 22 were handed to the witness.)

Q. (By Mr. Gearin): There has been handed to you Exhibit No. 15, also Exhibit No. 22. Have you seen those instruments before? A. Yes.

Q. When did you see them and how did you get them?

A. Well, they came in via mail from Bill Lawrence, our District Agent or District Manager at The Dalles. According to the stamps here, they were received on October 11, 1948.

Q. What did you do upon receipt of Exhibit No.

(Testimony of J. H. Porth.)

15, which is the [107] letter from Mr. Sondenaa?

A. These two came in together.

Q. What did you do when you received them, Mr. Porth?

A. Well, the letter from Mr. Sondenaa starts out by giving us the policy number, 2098402, and he recites the facts of an accident in which he was involved and signs it "Elmer N." or "Elmer W. Sondenaa, Box 716, Toledo, Oregon," and then that was sent in by Mr. Lawrence, and in the caption where it says "Insured" it says "Elmer H. Sondenaa," so I, upon receipt of this correspondence, checked that with what we call the "ABC." That is our alphabetical record of all policy-holders in the Northwest.

Q. What name did you check it for?

A. Well, I checked it for "Elmer H. Sondenaa," with the address, Box 716, Toledo, Oregon.

Q. The result of that search af your ABC record?

A. We found a record where we had an E. G. Sondenaa, Camp 12, Toledo, Oregon, who had had insurance with the Farmers Insurance Exchange back in 1934, but the policy had either been dropped or cancelled sometime prior to 1945, because we do not keep our records of cancelled policies over three years.

Q. Did you do anything in connection with the policy number which appears on Exhibit 15?

A. Yes.

Q. What?

(Testimony of J. H. Porth.)

A. I had the girl pull our policy file on this policy, No. 2098402, [108] and it showed, according to our records under that policy, that we had a Mr. A. von Borstel of Kent, Oregon, as assured.

Q. Anything in the files to indicate a transfer of title to the automobile covered by Mr. von Borstel's policy? A. No.

Q. Subsequent to that time did you have any communication from Attorney Weinstein?

A. Yes.

Q. What was the nature of your discussions or conversations with Mr. Weinstein?

A. Well, I recall the first discussion with Mr. Weinstein of this matter was over the telephone.

Q. What was the first thing you knew, or what was the first information you had that there was any relationship or connection, I should say, between A. von Borstel and Elmer Sondenaar?

A. That information was given to me by Mr. Weinstein.

Q. Do you recall the date?

A. According to the memory, the date is November 10th, I believe.

Q. What information did you receive from Attorney Weinstein relating to the connection between von Borstel and Sondenaar?

A. Well, the information Mr. Weinstein gave me was that the car that was involved in this accident was the one which we, according to our records, had supposed was in possession of and being operated by Mr. von Borstel. [109]

(Testimony of J. H. Porth.)

Q. Mr. Porth, I am handing you Defendant's Exhibit 20 and will ask you if you can identify that letter, please?

A. Yes, I remember these letters.

Q. Is that the letter you received from Attorney Weinstein? A. Yes, it is.

Mr. Gearin: We will ask that that be received in evidence as Exhibit No. 20.

The Court: Admitted.

Mr. Prendergast: What is the date of the letter, please?

A. November 15, 1948.

Mr. Prendergast: No objection.

The Court: Admitted.

(Letter dated November 15, 1948, Nathan Weinstein, Attorney-at-Law to Farmers Automobile Inter Insurance Exchange, heretofore marked for identification, was thereupon received in evidence as Defendant's Exhibit No. 20.)

Q. (By Mr. Gearin): This telephone conversation you had with Mr. Weinstein, when was that with relation to the letter identified as Exhibit 20?

A. I believe he called me on the phone at about the same time and discussed the matter.

Q. Do you recall whether you had the telephone call or telephone conversation before receiving the letter or not? A. I believe I did. [110]

(Testimony of J. H. Porth.)

Q. As soon as you received the information from Mr. Weinstein that this automobile was the automobile described in Mr. von Borstel's policy, what did you do?

A. Well, I called Mr. Tomlin, who was at that time our Branch Claims Manager in Eugene, and asked him to have one of the adjusters from the Eugene office contact Mr. and Mrs. Sondenaa who were living at Toledo, and discuss the matter with them and ascertain more facts as to the circumstances under which they were in possession of the automobile.

Q. What did you do about sending anyone up to Mr. von Borstel?

A. I sent Chuck Daly from our Portland office up to The Dalles, to get this thing investigated in The Dalles—obtain some information from Mr. von Borstel.

Q. Do you know who went over from the Eugene Branch Claims Office to see the Sondenaas?

A. Patterson.

Q. What was Mr. Patterson's position with the Exchange? A. He is a staff adjuster.

Q. Do you know what authority is extended to a staff adjuster? A. None.

Mr. Gearin: I think that is all.

Cross-Examination

By Mr. Prendergast:

Q. When an accident is reported, involving a

(Testimony of J. H. Porth.)

policy-holder, [111] how many people have charge of that particular accident, to investigate it?

A. I am the man who sends out the adjuster.

Q. You are the man? A. Yes.

Q. Your testimony is that you received, about October 11, 1948, from Mr. Lawrence, this transmittal of a letter from Sondenaa, bearing the policy number, sent to Lawrence and sent in to you. That is the first knowledge you had of this accident?

A. That is right.

Q. The next knowledge you had was on November 15th, when you received a letter, and, concurrently, had a telephone conversation with Mr. Weinstein?

A. That conversation with Mr. Weinstein is when we first had knowledge that the automobile, according to our records, was owned by Mr. von Borstel and was the automobile involved in the accident.

Frequently we receive letters from people and, come to find out, they are insured with the State Farm Mutual Insurance Company. The names are somewhat similar. I think Mr. Weinstein—if he will recall, I mentioned that possibility to him. That is the reason we got this letter from the State Farm Mutual agent down at Toledo.

Q. Let's get back to the point. The first time you knew that there was any question about whose name that car was in was when [112] you talked to Mr. Weinstein on the telephone on the 15th of November? A. Somewhere around there, yes.

(Testimony of J. H. Porth.)

Q. Then you received a letter from Mr Weinstein, which has been marked here as an exhibit.

A. Yes. I believe that letter was more or less in confirmation of our telephone conversation.

Q. Who sent Mr. Patterson down to Toledo, Oregon, to take a statement from Mr. Sondenaa on the 10th of November, five days before you had this conversation, and why did he go down?

A. On the 10th of November, Weinstein gave me the information.

Q. What date? A. Around the 10th.

Q. You just testified it was around the 15th, the date of that letter.

A. I said before it was around the 10th.

Q. You are changing your testimony to the 10th, now? A. No.

Q. When was it you talked to Weinstein?

A. It must have been somewhere around the 10th, because I never sent anybody down until he told me over the phone.

Q. However, Mr. Patterson took a statement—
Mr. Gearin: It is No. 12.

Mr. Prendergast: Could we hand this Exhibit No. 12 to the witness. [113]

(Exhibit No. 12 was handed to the witness.)

Q. Do you know Mr. Patterson's handwriting?

A. No, I can't say that I do.

Q. You never read any of his reports?

A. Mr. Patterson is stationed down at Eugene. I have always worked here in Portland.

(Testimony of J. H. Porth.)

Q. Who sent Mr. Patterson from Eugene over to Toledo? A. Mr. Tomlin.

Q. Mr. Tomlin? A. Yes.

Q. Did you know that? A. Yes.

Q. You knew ahead of time, before Mr. Patterson went from Eugene to Toledo to take the statement, that Mr. Patterson was going down to take the statement? A. Yes.

Q. Did you read the statement Mr. Sondenaa gave him at that time? A. No.

Q. Never have? A. No.

Q. If you had read it, you would have found out what anyone would, that he made the statement on the 10th?

A. That is the day Mr. Weinstein here—either that day or the day before—told me about von Borstel, that von Borstel was [114] involved in this.

Q. You want to move this up from the 15th to the 10th, now? Now you want to make it earlier than the 10th?

A. It could be the 10th, the same day.

Q. It could be before the 10th, couldn't it, too?

A. No; maybe one day before—I don't know.

Q. Do you know how Tomlin happened to send Mr. Patterson from Eugene to Toledo?

A. I don't know that exactly. Maybe Patterson was already down there. He is the territory adjuster. He may have been there in Toledo.

Q. How did anybody happen to know that Farmers were taking a statement from Mr. Sondenaa at Toledo on the 10th of November?

(Testimony of J. H. Porth.)

A. Weinstein either gave me the information that von Borstel was involved——

Q. Weinstein gave you the information about the 10th of November that Mr. von Borstel was involved? A. Yes.

Q. And immediately you contacted Mr. Tomlin on the 10th? A. Yes.

Q. And Mr. Tomlin then contacted Mr. Patterson, and Mr. Patterson then either was in Toledo or went to Toledo? A. That is right.

Q. On the 10th of November, then, Farmers knew all about the title to the car? [115]

A. No, we didn't. That is the reason we sent those boys out to get this statement.

Q. When Patterson got the statement, did you ever read it? A. No, I can't say that I did.

Q. Have you ever seen it before?

A. It has been in our file all the time, yes.

Q. This is a \$12,000 lawsuit and you never read the statement taken from Sondenaar. Why weren't you interested?

A. This file I did not handle. Our Claims Manager had handled it.

Q. As a matter of fact, you don't know anything about this case, do you? A. Oh, yes, I do.

Q. What do you know about it?

A. Ask me.

Q. Do you know anything about the statement taken from the man who was driving the car at the time of the accident? You never read this or were not interested in it?

(Testimony of J. H. Porth.)

A. I knew statements were taken. I know what the picture was of it.

Mr. Prendergast: That is all.

(Witness excused.) [116]

The Court: Ladies and Gentlemen, we will have to adjourn this case until tomorrow morning. We just hope we can get through without detaining you all day. Is there anybody who cannot be here at 9:00 o'clock in the morning? Well, then, we will adjourn until 9:00 o'clock tomorrow morning.

(Thereupon an adjournment was taken until 9:00 o'clock a.m., Saturday, June 17, [117] 1950.)

(Court reconvened at 9:00 o'clock a.m., Saturday, June 17, 1950.)

The Court: This attorneys' fee matter, is it to be submitted to the jury or handled by stipulation after the verdict?

Mr. Young: I understood, your Honor, that would be heard after the decision by the jury.

The Court: Do you want to do it that way?

Mr. Prendergast: Yes.

WILLIAM PATTERSON

was thereupon produced as a witness on behalf of Defendant and, being first duly sworn, was examined and testified as follows:

(Testimony of William Patterson.)

Direct Examination

By Mr. Gearin:

Q. Your name is William Patterson?

A. Yes.

Q. By whom are you employed?

A. The Farmers Insurance Group.

Q. In what capacity? A. As an adjuster.

Q. Where do you reside?

A. In Eugene, Oregon.

Q. Are you the individual who went to Toledo to obtain statements from the Sondenaas in connection with this subject matter?

A. Yes, sir, I am.

Q. I understand a statement was obtained first from Mr. Sondenaa and a second time, eight days later, a statement was obtained from Mrs. Sondenaa?

A. Yes.

Q. On either of those occasions on meeting Mr. and Mrs. Sondenaa did you make any statement regarding the question of coverage?

A. No, sir, I didn't.

Q. What was your purpose in going to Toledo to obtain statements from the Sondenaas?

A. To determine the facts of the accident and also determine ownership of the vehicle involved.

Q. At that time did you make any statement to either of them, on either of those two occasions, with regard to whether or not the Farmers was or was not defending claims that had been brought against them?

(Testimony of William Patterson.)

A. I gave them my statement of the fact that I didn't know.

Q. Didn't know what?

A. Whether or not they would be covered and defended.

Q. What, again, is your position with the Farmers? A. I am an adjuster.

Q. Are there many other adjusters in Eugene, Oregon? A. Yes, sir; seven or eight.

Q. Is there a Claims Manager at Eugene? [119]

A. Yes, there is.

Q. At the time you went out to Toledo to obtain the statements, who was the Claims Manager at Eugene? A. Mr. James M. Tomlin.

Mr. Gearin: That is all. You may inquire.

Cross-Examination

By Mr. Prendergast:

Q. When did you go to Toledo from Eugene?

A. My first visit was on the 10th of November.

Q. Did you leave Eugene on the 10th and go to Toledo? A. I don't remember that.

Q. When were you instructed to go to Toledo?

A. Most likely a day before my visit there.

Q. So the 8th or 9th of November you were instructed to go to Toledo and get statements?

A. I am surmising that because I can't remember when I got instructions to see these people.

Q. Who instructed you to go to Toledo?

A. Mr. Tomlin.

Q. Mr. Tomlin? A. Yes.

Q. By telephone?

(Testimony of William Patterson.)

A. More than likely it was in conversation between us in the office in Eugene. [120]

Q. Was Mr. Tomlin in Eugene?

A. He was, sir, at that time.

Q. Mr. Tomlin sent you down to Toledo to take statements from the Sondenaas? A. Yes, sir.

Q. Did he give you any written instructions?

A. No.

Q. Did he give you any documents or reports of the accident at all?

A. Yes, I was given what we know as field files, the field file.

Q. The field file? A. Yes.

Q. Do you have the field file with you?

A. No, sir; I don't.

Q. Who has the field file?

A. Since our investigation was completed, it was consolidated with the master file, and the field file, where there was duplication, has been destroyed.

Q. Probably destroyed, you say? A. Yes.

Q. This field file, with all the information that the insurance company had in regard to this accident, you say that has been destroyed?

Mr. Gearin: That is not what he said.

A. Just the duplicate copies. [121]

Q. (By Mr. Prendergast): Please?

A. Just the duplicate or triplicate copies. Usually the duplicate or triplicate copies are the only things that are destroyed.

Q. Did you take that with you when you went to Toledo? A. Yes, I did.

(Testimony of William Patterson.)

Q. What was the purpose of taking the field file with you?

A. To give the adjuster something with which to work. If he has 15 or 20 cases, he certainly cannot carry all of it in his head.

Q. What facts were you given in regard to this particular matter when you went to Toledo?

A. I was informed that the Sondenaas had been involved in an accident and I was asked to go and get their statement.

Q. Were you given the information as to where the accident occurred and when it occurred?

A. Yes, I knew that.

Q. And who was driving the car?

A. Yes, sir.

Q. And the number of the policy?

A. I believe the number of the policy, yes.

Q. You had never met the Sondenaas before that visit?

A. No, I hadn't.

Q. On that occasion, on the 10th of November, you took a statement from Mr. Sondenaa?

A. Yes, sir.

Q. Was Mrs. Sondenaa present? [122]

A. Yes, she was.

Q. This statement was written up by you and signed by Mr. Sondenaa, I believe, the statement that is in evidence here?

A. Yes.

Q. At that time did Mr. Sondenaa give you any document, letters or other written information regarding the accident?

A. I believe he did.

Q. What did he give you, Mr. Patterson?

(Testimony of William Patterson.)

A. A letter or possibly two letters from Mr. Weinstein.

Q. From Mr. Weinstein? A. Yes.

Q. Why did he give you those letters?

A. There was a question of whether the Exchange would cover and defend the Sondenaa family without loss.

Q. Did you inform Mr. Sondenaa of that?

A. Yes. That was my purpose in taking the second statement.

Q. I am speaking now of the first statement, on November 10th.

A. I am referring to the second statement taken November 10th.

Q. To the second statement taken on the 10th?

A. Yes.

Q. What do you mean by that? Did you take two statements on the 10th? A. Yes, sir; I did.

Q. From Mr. Sondenaa? A. Yes. [123]

Q. Why did you take two statements instead of one?

A. Well, covering two different phases of the investigation; one, the facts of the accident and, the other, the ownership of the vehicle.

Q. Did you request of Mr. Sondenaa these letters of Mr. Weinstein?

A. I don't remember whether I requested them or not.

Q. After you left the Sondenaa's, or when you left, what instructions did you give Mr. Sondenaa?

A. I told him to keep us advised of any further

(Testimony of William Patterson.)

communications that he might receive. I didn't instruct him to forward those to us.

Q. Where did you tell him to advise you of any further developments?

A. I may or may not have given him my business card. I don't remember.

Q. You informed him you were from the Eugene office? A. Yes.

Mr. Prendergast: That is all.

(Witness excused.)

The Court: Do you have three statements?

Mr. Gearin: We have two statements taken from Mr. Sondenaa on the 10th of November and two from Mrs. Sondenaa on the 18th. In each instance there is one statement as to the facts of the [124] accident and a second in regard to the ownership of the automobile.

• J. M. SMITH

was thereupon produced as a witness on behalf of Defendant and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Young:

Q. Will you state your name to the jury, please?

A. J. M. Smith.

Q. Do you live in Portland? A. I do.

Q. What is your occupation, Mr. Smith?

(Testimony of J. M. Smith.)

A. I am Northwest Branch Manager, Ladies and Gentlemen, of the Farmers Insurance Group.

Q. Will you tell the jury what the term "Farmers Insurance Group" means?

A. It is the term that applies to three separate insurance organizations, the Farmers Insurance Exchange, the Truck Insurance Exchange, and the Fire Insurance Exchange.

Q. In the case of insurance issued on passenger automobiles, which of those exchanges has control?

A. The Farmers Insurance Exchange.

Q. What are your general duties?

A. To direct the operation of those organizations in the four [125] Northwest States; Oregon, Washington, Idaho and Montana.

Q. How long have you been connected with the Farmers Insurance Group?

A. The 1st of November it will be twenty years.

Q. How long have you been associated with the Farmers Group in your present capacity?

A. About four and a half years, as Branch Manager.

Q. That is in Oregon? A. Here in Oregon.

Q. Are you familiar with whether or not there is a District Agent in Toledo or the Newport area?

A. Newport, Oregon?

Q. Yes.

A. Yes, Judge Gilkey is the District Agent there.

Q. How long has Judge Gilkey been in that area?

A. Oh, I would say fourteen or fifteen years.

(Testimony of J. M. Smith.)

Q. How does he happen to have the title as "Judge"? Are the members of your organization called judges?

A. No. He also is County Judge down there, as well as the representative of our organization.

Q. Is he well-known in that community?

A. Yes.

Q. Does the Farmers Insurance Group have an office down there, either at Toledo or Newport, Oregon?

A. In Newport, Oregon. [126]

Q. In Newport? A. Yes.

Q. That is the headquarters of Judge Gilkey?

A. That is right, sir.

Q. Has that office been maintained there during all the time Judge Gilkey has represented your organization?

A. Yes, he has had an office there all the time.

Q. Does the name "Farmers Insurance Group" appear in the local telephone directory?

A. It does.

Q. Are you acquainted with Mr. Lawrence of The Dalles, who has been identified here as the District Agent for the Farmers Insurance Group in that city?

A. Yes, I am.

Q. How long have you known him?

A. Possibly three years.

Q. What is his authority as representative of the Farmers Insurance Group?

A. Well—

Mr. Prendergast: I am going to object to that question. I do not see the materiality of it at all and I object to it as being incompetent, irrelevant and immaterial, wholly immaterial.

(Testimony of J. M. Smith.)

The Court: Objection overruled.

Q. (By Mr. Young): Answer the question.

A. His duties are to solicit insurance in the two counties [127] assigned to his District and to service policy-holders.

Q. Does he have authority to make collection of premiums? A. Oh, yes.

Q. Does his authority extend beyond the limits of either of the two counties in which he is agent?

A. No. He is assigned that area.

Q. What counties are those?

A. Well, it is the county that The Dalles is in. I can't recall the name of the county.

Q. Sherman and Morrow, is that right?

A. Sherman and Morrow.

Q. The Wasco area?

A. Wasco, yes. They are adjoining counties there.

Q. Does the District Agent at The Dalles, who, in this case, is Mr. Lawrence, have any authority whatsoever to alter or change the terms of any insurance policies issued by the Farmers Insurance Group?

Mr. Prendergast: Objected to, your Honor.

The Court: The objection is overruled.

A. No, he does not.

Q. (By Mr. Young): Is there anyone in the State of Oregon who would have such authority?

A. No—yes, to issue endorsements or waivers. The underwriters in the Portland office have that authority.

(Testimony of J. M. Smith.)

Q. Is Portland the only place where there is anyone who would [128] have that authority?

A. The only place in the Northwest territory.

Q. There is an office of the Farmers Insurance Group in Portland, of course? A. Yes.

Q. Where is that located?

A. 18th and Sandy, here in Portland.

Q. That is the large building at that particular place? A. 18th and Sandy Boulevard, yes.

Q. The Bailiff has handed you Exhibit 23, which has already been identified, and which is a form of application for insurance. The document which the Bailiff has just handed you, Mr. Smith, contains, on one side, a great many questions.

Will you tell the jury what that document is for?

Mr. Prendergast: I would like to object to this entire line of testimony, your Honor. This document the witness holds in his hand is a blank. What its relevancy is to this case I cannot possibly see. I would like to at least have the record show that we are objecting to it as being incompetent, irrelevant and immaterial.

The Court: He may answer.

A. The application has two purposes: In the solicitation of insurance, to determine the applicant's name, the address, description of the car, the coverage that is desired, whether or not there is a mortgage on the vehicle that is being insured, and [129] *so and so forth*. Then, on the back side, at the top, is a place for the agent's report, and there are many questions that have to do with whether or not the

(Testimony of J. M. Smith.)

applicant is acceptable to the company as a risk for insurance.

Q. (By Mr. Young): Why are those questions asked of the applicant?

A. Not everyone is acceptable as a risk. People with physical defects that might affect their driving ability are not acceptable. People who have bad driving records are not acceptable as risks. People who have been arrested for driving while intoxicated or for reckless driving are not acceptable, and then some people are under age and are not acceptable. Some are over age and not acceptable.

Q. Do any one of the insurance exchanges ever issue a policy unless one of these forms has been filled out and has been accepted by the company?

A. No, this is required in every case.

Q. Is there any circumstance under which a policy held by one person can be transferred to another person, without such a form being filled out?

A. No. It must be filled out.

Q. There is testimony in this case that the agent of the Exchange at The Dalles made some comment to the effect that this policy could be transferred from the father to the daughter, if the car remained in the family. Is there any practice of the Exchange [130] on that subject?

A. Yes. A policy, under certain conditions, may be transferred from one member of an immediate family to another member of that family, and the condition is that they reside in the same household.

Q. Would it ever be the practice or would it ever

(Testimony of J. M. Smith.)

be permissible for one of these policies to be transferred, say, from the father to a daughter, when they are maintaining separate households, the daughter being married and living 250 miles away?

A. No, that would not be allowable or acceptable for transfer.

Q. In a case where the transfer is made to a person who is related to the holder of the policy, but is not a member of the family, would the policy itself be transferred or would there have to be a new policy issued?

A. There would have to be a new policy issued.

Mr. Young: That is all.

Cross-Examination

By Mr. Prendergast:

Q. Mr. Smith, in answering these questions you have said that certain things are necessary, that certain things must be done. Where did you get those requirements? Where are those requirements stated? Are they in the policy?

A. Some are in the policy and some are in the Manual that we file with the Insurance Department in this state. [131]

Q. Do you have a copy of the Manual with you?

A. No, sir; I do not.

Q. Where in the policy does it say that a policy can be transferred from one member of the family to another member of the family, providing they reside in the same household?

A. It does not say so in the policy. That is in

(Testimony of J. M. Smith.)

the Manual that is filed with the State Insurance Department.

Q. That Manual is not given to the policy-holder, though? A. No.

Q. That is a company rule, then?

A. That is right.

Q. So, all this testimony as to what must be done and what should be done has to do with company rules?

A. Well, however, they are filed. All the Insurance Department requirements that we follow are in that Manual.

Q. Is it your testimony that in that Manual which you file with the Insurance Commission of the State of Oregon it says that a policy may be transferred from one member of the family to another member of the family who resides in the same household? A. Yes. •

Q. It says that definitely? A. Yes, sir.

Q. And it says that it cannot be transferred to a member of the family who resides elsewhere? [132]

A. I don't know whether it says it cannot. Generally it says that the only conditions under which a policy may be transferred from one member of one family to another is for them to be residing in the same household.

Q. In order to effect such a transfer, what is necessary?

A. The taking of this application from the person who is applying to have the insurance transferred to them.

(Testimony of J. M. Smith.)

Q. That application is the application you use for writing a new policy, too, is it not?

A. That is right.

Q. In other words, that is the same application that anybody would use in attempting to sell insurance; you have them fill out that application.

A. Yes.

Q. Regardless of where they live?

A. Oh, yes.

The Court: Who passes on the application?

A. The underwriter in the Portland office.

The Court: What is an underwriter?

A. An underwriter is a person designated to determine whether or not the risk is acceptable to the company.

The Court: You mean an agent at The Dalles cannot take an application for insurance direct?

A. Yes, he will take it direct, and the application will be reviewed by the underwriter in the Portland office, and its [133] acceptability will be determined by the underwriter in Portland.

The Court: Where does this policy come from?

A. The policy is issued in the Portland office.

The Court: The man is insured from the time the agent takes the check?

A. Yes, he is insured from the time he takes the application and check until such time as he is canceled or rejected, let's say.

Mr. Prendergast: Has the Court finished.

The Court: I am finished for the moment.

Q. (By Mr. Prendergast): Mr. Smith, this pol-

(Testimony of J. M. Smith.)

icy provides that anybody operating an automobile with the permission of the insured is covered by insurance, does it not?

A. Anyone may drive a policy-holder's car and be covered if they are driving that car with the policy-holder's permission.

The Court: In connection with these family transfers, made in the same household, what do they usually do? Hand the policy over to the other?

A. No, sir, it is a matter of taking a signed application.

The Court: That is no different than any other transfer?

A. I don't believe I quite understand the question, sir.

Q. (By Mr. Prendergast): Let's pursue that a bit further. Say a father wants to transfer a car to his daughter who is residing at home. Do you take a new application the same as you would from a new insured? [134]

A. Yes.

Q. And make your investigation, if they are still holding the policy?

A. Yes.

Q. What do you do? Take the policy back from the father?

A. Take the policy.

Q. Yes, and a new policy is issued?

A. A new policy is issued.

Q. A new policy is issued?

A. Yes. If the daughter or the son, or whoever they want the policy transferred to, after taking this application, if they are acceptable a new policy is

(Testimony of J. M. Smith.)

issued to the new policy-holder. The same policy is not transferred.

Q. There isn't any such thing as transferring of the policy, then? It is a new policy?

A. Let me say this: I think it will clear it up: There is no transfer of the policy. There is a transfer of the membership fees in connection with the policy.

Q. What do you mean?

A. The membership fees represent the sales or acquisition cost.

Q. Do you mean they get some credit for the premium that is prepaid?

A. Let us say that the father buys a policy. This application is taken. The membership fee is charged for each coverage purchased, as, for example, bodily injury and property damage, a [135] very popular coverage, for which a \$5.00 membership fee is charged for that coverage. That is the sales and acquisition cost. That remains to the credit of the policy-holder, entitling him to insurance the rest of his life.

If he wants to transfer that membership fee—I think that is the better term, transfer the membership fee rather than the policy—to a member of his family residing in his household, then this application is taken.

Q. What happens to that membership fee? Does he get it back? A. No.

Q. In other words, it is just an extra \$5.00 that the company gets, is that it?

(Testimony of J. M. Smith.)

A. No. It is the commission that goes to the agent; it is sales and acquisition cost involved in every insurance policy.

The Court: Don't go into all of that or we will be here another week.

Mr. Prendergast: All right, your Honor.

Q. In regard to the County Judge down in Lincoln County, Judge Gilkey, his primary business is being County Judge, is it not?

A. Well, I don't know whether I am qualified to say what his primary business is. He is the County Judge and he sells—he is the County Judge as well as District Agent there.

Q. The office that Judge Gilkey occupies, is that office maintained and the rent paid by the Farmers Insurance Exchange?

A. No. That is paid by Judge Gilkey. [136]

Q. In other words, it is paid by Lincoln County, and he just writes some insurance on the side?

A. No. He owns his own building and maintains an insurance office in it.

Q. In this particular office is a courtroom occupied by Judge Gilkey?

A. The courtroom belongs to the County, yes.

Q. Is there any sign on there that says, "This is the office of the Farmers Insurance Exchange" or the "Farmers Group"?

A. Yes, there is a Neon sign that says "Farmers."

Q. Outside on the building? A. Yes.

Q. Is Judge Gilkey on a salary?

(Testimony of J. M. Smith.)

A. With Farmers?

Q. Yes. A. No, he works on a commission.

Q. That office is over at Newport?

A. Over at Newport.

Q. Toledo is the County Seat of the County, is it not? A. I believe so.

Q. You maintain no office in Toledo?

A. We might have a local agent's office there, or a local agent. There is no office, though.

Q. Who is the local agent?

A. I couldn't tell you, sir. [137]

Q. The Farmers Group write extensive insurance in this state? A. Yes.

Q. How many policy-holders do you have, approximately?

Mr. Young: That is objected to.

The Court: Sustained.

Q. (By Mr. Prendergast): You are on a salary with Farmers, are you not? A. Yes.

Q. What is your salary? A. \$950 a month.

Q. You have been with them twenty years?

A. Yes, sir.

Q. Do you receive any override on commissions?

A. No, sir.

Q. That is your entire remuneration from the company, nine hundred and some-odd dollars per month? A. Yes, sir.

Mr. Prendergast: That is all.

(Testimony of J. M. Smith.)

Redirect Examination

By Mr. Young:

Q. You said that there was no provision in the policy with respect to transfers. Are you familiar with Condition 18 which reads in part:

“No assignment of interest under this policy [138] shall bind the Exchange until its consent is endorsed hereon”?

A. Yes.

Q. There is that provision in the policy?

A. Yes.

Q. But that is the only one, I believe?

A. That is right.

Q. You mentioned on cross-examination the existence of a document called a “Manual” which the Exchange files with the Insurance Commissioner at Salem.

A. Yes.

Q. Do your various District Agents throughout the state have copies of those Manuals?

A. Yes.

Q. Are they subject to the regulations and rules set forth in those Manuals?

A. Yes.

Q. Does any one of the District Agents in the State of Oregon have any authority to waive or alter any provisions of those Manuals?

A. No, sir.

Q. And that would include Mr. Lawrence at The Dalles, would it?

A. Yes.

Q. Are those Manuals public records?

(Testimony of J. M. Smith.)

A. Yes, they are on file with the Insurance Department. [139]

Mr. Young: That is all.

(Witness excused.)

Mr. Young: At this time, your Honor, I wish to offer in evidence Defendant's Exhibit No. 23.

Mr. Prendergast: No objection.

The Court: Admitted.

(Form of Agent's Report, Farmers Insurance Exchange, heretofore marked for identification, was thereupon received in evidence as Defendant's Exhibit No. 23.)

Mr. Gearin: At this time, your Honor, I would like to introduce the Exhibit 21, the Certificate of the Secretary of State regarding the transfer of this automobile; Exhibit No. 18 the letter of Attorney Weinstein to the Sondenaas, under date of November 16, 1948; Exhibit No. 24, the copy of proceedings in the Multnomah Circuit Court case.

The Court: Admitted.

(Certified copy of Certificate of Title issued to A. von Borstel, covering Plymouth sedan, and copy of Assignment of Title by registered and legal owners, heretofore marked for identification, was thereupon received in evidence as Defendant's Exhibit No. 21.)

(Letter dated November 16, 1948, Nathan Weinstein, [140] Attorney-at-Law, to Elmer

and Helen L. Sondenaa, heretofore marked for identification, was thereupon received in evidence as Defendant's Exhibit No. 18.)

(Certified copy of pleadings in case of Louise Holm, plaintiff, vs. Elmer N. Sondenaa and Helen L. Sondenaa, husband and wife, and A. von Borstel, No. 185-807, Circuit Court of the State of Oregon for Multnomah County, heretofore marked for identification, was thereupon received in evidence as Defendant's Exhibit No. 24.)

Mr. Gearin: That is all.

The Court: Any rebuttal?

Mr. Prendergast: No, rebuttal, your Honor. I want to check the exhibits, if I may.

Mr. Young: At this time, your Honor, there is a legal matter which I would like to present to the Court.

The Court: Wait until we finish with this.

Mr. Prendergast: That is all for the moment, your Honor.

The Court: What do you mean, "for the moment"? Are you through?

Mr. Prendergast: We are through, save and except for the matter we discussed relative to attorneys' fees. We have some legal matters to take up.

I believe I am correct in stating that it has been agreed by counsel that, if plaintiff should prevail and be entitled to attorneys' fees, the amount of attorneys' fees can be settled and determined by the Court.

Mr. Gearin: That is satisfactory, your Honor.
The Court: You are through?

Mr. Prendergast: Through with the evidence, yes.

The Court: Take the jury over to Judge Fee's courtroom. Ladies and Gentlemen, will you go with Major Kneass to the other side for a while?

(The jury was thereupon excused from the courtroom.)

DEFENDANT'S MOTION FOR AN ORDER DIRECTING A VERDICT AGAINST PLAINTIFF

Mr. Young: At this time, your Honor, the defendant moves the Court for an order directing a verdict against the plaintiff and in favor of the defendant for the following reasons:

In the first place, under the "Insuring Agreements," Agreement I, Coverage A, the Exchange agrees "to pay on behalf of the insured all sums which the insured shall become obligated to pay by reason of the liability imposed upon him by law for damages * * * because of bodily injury * * *"

Under Insuring Agreement III, "The unqualified word 'insured' wherever used in Coverage A * * * includes not only the named insured but also any person while using the automobile and any person * * * legally responsible for the use thereof, provided that the declared and actual use of the automobile * * * is with the permission of the named insured."

It appears, without dispute, from the evidence that the insured, A. von Borstel, on June 29, 1948,

transferred his [142] Certificate of Title to the 1940 Plymouth to his daughter, Helen Sondenaa.

Accordingly, on October 3, 1948, when the accident occurred, von Borstel was not the owner of the car and, therefore, not the insured under the policy.

Moreover, having transferred title to the car to his daughter, von Borstel no longer had the capacity to permit his daughter or anyone else to use the car. Helen Sondenaa, therefore, was not an additional insured under the policy.

In the second place, as the owner of the 1940 Plymouth by transfer from her father, Helen Sondenaa acquired no rights under the policy.

Condition (17) titled "Changes" reads: "No notice to any agent or knowledge possessed by any agent or by any other person shall be held to effect a waiver or change in any part of this policy nor estop the Exchange from asserting any rights under the terms of this policy * * *"

Condition (18) titled "Assignment" reads: "No assignment of interest under this policy shall bind the Exchange until its consent is endorsed hereon * * *"

Within the meaning of these two provisions of the policy, the transfer of title to Helen Sondenaa from von Borstel of the 1940 Plymouth automobile, not having been consented to by the Exchange, through endorsement on the policy, made the transfer of the policy to Helen ineffective. [143]

In the third place, your Honor, Title 101, Chapter 13, O.C.L.A., relating to reciprocal insurance, provides for a form of insurance through the exchange

of insurance contracts by members of the organization provided for in the Act. It also provides that insurance contracts may be executed for subscribers by an attorney duly authorized and acting for such subscribers. I refer in this regard to Section 103-1302, O.C.L.A.

Helen Sondenaa was not a member of the Insurance Exchange and, therefore, not eligible for insurance protection.

In the fourth place, your Honor, the insuring agreements and conditions of the policy provide, among other things, that the Exchange agrees with the insured, "named in the Declarations, made a part hereof, in consideration of the payment of the membership fee" and the execution of a power of attorney to the Farmers Underwriters Association, to protect the insured in a certain manner.

There is neither pleading nor proof that Helen Sondenaa ever paid such a membership fee or executed such a power of attorney. Therefore, by the terms of the policy she could not be entitled to insurance protection.

Fifth, your Honor, the policy of insurance involved herein is an executory contract, in connection with which the personal character of the insured is an important element and, therefore, as a matter of law, not assignable without the consent of the parties. Her purported assignment occurred before the accident [144] took place. The consent of the Exchange not having been obtained, the purported assignment was ineffectual. That this policy of insurance involves the personal character of the in-

sured appears definitely from Exhibit 23 which has just been introduced in evidence.

In the sixth place, the alleged statement by District Agent Lawrence of the Exchange, that the policy would have to be "signed by the daughter, but that since the premium was paid and the transaction remained in the family the policy would cover Helen Sondenaa," does not estop the Exchange from asserting non-liability under the policy.

To begin with, there has been no showing whatever in this case that the District Agent had any authority to make such statements, if in fact they were made, or to bind the Exchange by such statements.

Condition (17) of the policy expressly states that the terms of the policy may not be changed or varied "except by endorsement issued to form a part hereof, signed for Farmers Automobile Inter Insurance Exchange, by an executive officer of its attorney-in-fact, the Farmers Underwriters Association."

Moreover, as appears without contradiction from the testimony of Mr. Smith, the last witness on the stand, the Manual of the Exchange and the rules and regulations bind these agents, and these agents are not at liberty to alter or change the Manual or the rules and regulations in any regard. [145]

Moreover, your Honor, the purported statement, if it was made at all to von Borstel, was to the effect that the policy would have to be "signed" by the daughter, and that failure by the daughter to sign would render the policy ineffective.

Again, the transaction was not one remaining in

the family, in the sense of the family living under one roof, because the von Borstel and Sondenaa families were separate and distinct families, living at remotely located geographical points, the distance between them some 250 miles.

Furthermore, the representations made by Mr. Lawrence were made to von Borstel and not to Helen Sondenaa, and he is the only one who could complain in respect to any representations made, and he has not complained and is not complaining.

Again, there were no representations made in this case to the plaintiff, Louise K. Holm, and she at no time ever acted or relied upon any statement whatsoever made by Mr. Lawrence.

Still again, the provisions of the policy relating to assignment of interest and lack of power in general to change the terms were known to or should have been known to von Borstel, for he had the identical policy in his possession for ten years prior to the transfer of this automobile and, moreover, he knew from his experience in 1940, when he exchanged his earlier Plymouth automobile for the 1940 Plymouth automobile, that instructions to change the policy had definitely been given by him to [146] the Exchange.

In that regard, your Honor, I call your attention to the policy of insurance which is before the Court, and which contains a rider issued to Mr. von Borstel on the 11th day of May, 1942, by the Farmers, wherein it states in so many words that "In accordance with your instructions, coverage on your pol-

icy is transferred by this endorsement to cover the car described below instead of as heretofore.”

In addition, your Honor, von Borstel had all reasonable opportunity to learn the facts and obviously made no effort whatsoever to do so.

Finally, Helen and Elmer Sondenaa——

The Court: Where are you reading all that from?

Mr. Young: These are some memoranda I prepared. The subject is a little technical and I did not wish to rely on my memory.

The Court: You do not have all that on one page?

Mr. Young: No, your Honor. I have several pages here. Finally, Helen Sondenaa——

The Court: This is the longest motion for a directed verdict I ever heard.

Mr. Young: I always like to break the record, your Honor, if possible. This apparently may be one of those instances, although I thought perhaps by stating this matter in considerable detail your Honor would have before you, in succinct form, all the points we have in mind, to the end that the record will be complete, and [147] your Honor can have before you full opportunity to give consideration to these matters.

The last point I have in mind in this connection is that both Helen and Elmer Sondenaa failed to use reasonable diligence to acquire any knowledge of the facts.

Again, seventh, I call your Honor's attention to this, that retention of the premium by the Exchange

does not constitute any estoppel or waiver which would create any insurance rights in Helen Sondenaa for the reason that at the time the premium was received by the Exchange the evidence shows they did not know what the factual situation was with respect to the title to the car; this is a circumstance which, in any event, occurred after the loss took place, and Mrs. Sondenaa herself had the policy in her possession at this time.

Finally, at the time, or shortly after the time the premium was received the Insurance Exchange put all of the parties on notice that it regarded the situation as being one where there was no coverage, so that retention of the premium cannot here be considered, under any circumstances, as an admission that there was coverage, that circumstance being completely rebutted by letters sent out to the parties.

Finally, Mr. von Borstel has never made any request for the return of the premium.

If the Court please, those are our points.

(Argument of Counsel.) [148]

The Court: I am going to submit the case to the jury. I am going to reserve decision on the motion for a directed verdict until after the verdict of the jury.

I am inclined to think that there are two aspects to this matter of estoppel, one of express warranty, the other of acceptance and retention of the premium. There is no fact dispute about that latter, and I am inclined to think the company is in a bad

position as to that, as a matter of law, that it estops it from taking the position it does here. Since there is no fact in issue, I am not going to submit that to the jury. I am going to submit to the jury this factual dispute between the parties at the outset.

Mr. Gearin: I assume, your Honor, arguments will be limited, then, to the statements of Lawrence with regard to what was said to the change in the policy and that, in view of your Honor not submitting this other question to the jury, we will be precluded from arguing that to the jury.

The Court: I am telling you that all I am going to submit to the jury is the sole question of the conflict in the evidence as to what Lawrence said up there.

Mr. Gearin: Do you wish requested instructions submitted at this time?

The Court: I haven't any as yet.

(Recess.)

(Arguments of counsel for the respective parties [149] to the jury.)

COURT'S ORAL INSTRUCTIONS TO THE JURY

The Court: Ladies and Gentlemen, there are a number of questions in this case, but I am only going to submit one to you. I have explained that to the lawyers previously. They argued the case to you somewhat with that background.

The function of a jury, as I know you understand the rules, is to try disputed questions of fact.

Questions of law are for the decision of the Court, and there are some questions of law in this case, as you have observed.

It will be your function to decide the dispute as to what was said at The Dalles between Lawrence and von Borstel. There is a dispute between them that you will have to decide. Jurors very often have that very thing to do—to decide where the stories clash and cannot be reconciled. Bad memory or misunderstanding often enter into it. Sometimes one answers one way and the other answers the other way—answers the opposite—and both believe they are telling the truth.

In this case, regardless of what the attorneys have stated, that is the dispute which I am going to submit to you for decision.

This plaintiff, like every plaintiff, has the burden of proof, and must satisfy you by a preponderance of the evidence, that von Borstel's version of what happened there is the correct [150] one—must prove that to your satisfaction by a preponderance of the evidence, and greater weight of the evidence. If you are so satisfied, your verdict must be for the plaintiff. If you are not so satisfied, your verdict will be for the defendant.

Von Borstel says that he went to Lawrence, the District Agent for these companies at The Dalles, and told him he was giving a Plymouth car to a married daughter who lived in Toledo, and he wanted to know what was necessary to make sure that the insurance on it was good after he gave her the car. That is a rough way of putting it.

He says that Lawrence, the agent, told him that his daughter should go to the company's agent down there in that country where she lived, and that she should "sign the policy." I don't know what that means, and that is one of the things you will have to figure out.

He claims* having communicated that to his daughter. Actually, they claim they understood from that, because she was his daughter, the car was still in the family and the car would remain in the family and the insurance would be good and the insurance would protect her ownership, in accordance with the terms of the policy.

They claim they understood Lawrence to mean that, while she should go down to the agent, it was not an indispensable requirement, and that the insurance would be effective, so long as he turned the car over to her and the policy, as well. [151]

If you believe that story, by a preponderance of the evidence, and if you feel that the daughter and son-in-law acted on it, and, as a result, did not believe under the circumstances it was necessary to make a new application to the company and get the company's approval of the transfer from von Borstel, your verdict should be for the plaintiff.

If you do not believe that by a preponderance of the evidence, and that is if you don't believe von Borstel's version of it, then your verdict will be for the defendant.

That is the only question I submit to you. You are the exclusive judges of the credibility of the witnesses and of the weight and the value of their

testimony. You will take the exhibits with you to the jury room and will give them such weight as you feel they are entitled to.

Your verdict must be unanimous. Upon retiring to the jury room you will elect a foreman who will sign your verdict. Take the jury upstairs, Major.

Do not begin to deliberate on the case, Ladies and Gentlemen, until we send up the exhibits.

Swear the Bailiff.

(The Bailiff was then sworn.)

The Court: The Bailiff will bring the exhibits and two forms of verdict up to you very soon. Don't begin to deliberate on the case—that means discuss it—until after you get these exhibits and the forms of verdict.

(The jury thereupon retired to the jury room.) [152]

OBJECTIONS TO THE COURT'S INSTRUCTIONS

The Court: The plaintiff will state his objections for the record.

Mr. Prendergast: May we have just a moment, your Honor?

The Court: The defendant's attorneys will state your objections meanwhile.

DEFENDANT'S OBJECTIONS TO COURT'S INSTRUCTIONS

Mr. Young: At this time the defendant excepts——

The Court: Objects.

Mr. Young: ——object to your Honor's submission to the jury of the von Borstel version, in the particular that it was stated Mrs. Sondenaa, the daughter, would have to sign the policy. I think from the evidence in the case it would appear that the term meant was that they would have to sign an application.

The defendant also objects to the failure of the Court to give the Lawrence version of the same conversation, which version was that Lawrence told von Borstel if his daughter took the car and he retained possession of title the car would then be insured in his name and the daughter would be additionally insured; but, on the other hand, if title passed to the daughter, then the daughter would become a new applicant and would have to sign an application.

The Court: You have a motion for requested instructions. [153]

Mr. Young: The defendant also objects to the failure of the Court to grant each and all of the requested instructions submitted.

The Court: Objections noted, and the record may show that I have considered them all, and that each and all are overruled, with exception to the defendant.

PLAINTIFF'S OBJECTIONS TO COURT'S INSTRUCTIONS

Mr. Prendergast: The plaintiff objects to the instructions of the Court in stating to the jury the von Borstel theory and in failing to instruct the jury that von Borstel contended Lawrence, in addition to saying that the policy should be signed, stated in the meantime that the daughter would be covered so long as the premiums were paid.

Further, plaintiff objects to the Court's failure to instruct the jury with regard to the doctrine of estoppel as to the right of the insured to rely upon the ostensible authority and statements made by the agent at the time.

The Court: The objections of the plaintiff have been noted, have been considered, and each and all are overruled.

To make a better record in this case, the correct way would be this: For the plaintiff, you should move now for a directed verdict as a matter of law, on the ground that the acceptance and retention of the later premium in November constituted an estoppel against the defendant, as a matter of law. [154]

When you make that motion, I will reserve ruling on it and consider it at the same time I consider the other questions that I have reserved.

Mr. Prendergast: Is it possible for plaintiff's counsel to say, "I so move"? I didn't quite catch your Honor's statement. The gist of the motion is that the plaintiff moves for a directed verdict

upon the ground that the acceptance of the later premium——

The Court: ——and retention of it.

Mr. Prendergast: ——on the ground that the acceptance and retention of a later premium by the defendant constituted an estoppel to deny liability, as a matter of law.

The Court: Decision on the motion is reserved, along with the other questions that have been reserved in the case.

Now, send the exhibits and the forms of verdict up to the jury.

Mr. Young: In view of your Honor's suggestion to Counsel with reference to moving for a directed verdict and Counsel's concurrence in so doing, the defendant then objects to that procedure upon the ground that there should have been submitted to the jury, as a question of fact, whether or not the defendant had full knowledge of the circumstances surrounding the ownership of the car at the time that it accepted the premium.

The Court: The objection is overruled.

Mr. Gearin: Or, the other way around, we object to the [155] failure of the Court to submit that question to the jury.

The Court: Your co-Counsel just said that.

Mr. Gearin: I want to put it in another form.

The Court: Objection overruled.

(Recess.)

Mr. Young: Do I understand that whenever the

verdict comes in your Honor will rule on the various legal matters?

The Court: No.

Mr. Young: Your Honor merely will receive the verdict?

The Court: That is all. [156]

Monday, October 30, 1950—10:00 o’Clock A.M.

Mr. Prendergast: At this time counsel for the plaintiff and counsel for the defendant have appeared for the purpose of settling the form of judgment that is herewith tendered to the Court.

The form of judgment provides that the plaintiff have and recover of and from the defendant the sum of \$10,000, which is the agreed limit of the policy, save and except for additional sums which the plaintiff claims they are entitled to under the provisions of the policy.

Those fall into three categories, questions to be determined: First, plaintiff contends that they are entitled to the sum of \$10,000, together with interest on the sum of \$12,773.40, which is the amount of judgment rendered in the Circuit Court for the State of Oregon, for the County of Multnomah, in the case of Louise Holm vs. Elmer N. Sondenaar, et al., No. 185-807.

Plaintiff contends that the interest on the sum of \$12,773.40 is in keeping with the decision in New Jersey Fidelity & Plate Glass Insurance Company vs. Clark, reported in 33 Fed. (2) at Page 235, and comes under the terms of the insurance policy in Section II, subsection (B) which provides that the insurance company will “pay all premiums on [157]

bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, but without obligation to apply for or furnish such bonds, all costs taxed against the insured in any such suit, all expenses incurred by the Exchange, all interest accruing after entry of judgment until the Exchange has paid, tendered or deposited in court such part of such judgment as does not exceed the limit of the Exchange's liability thereon, and any expense incurred by the insured, in the event of bodily injury, for such immediate medical and surgical relief to others as shall be imperative at the time of accident. The Exchange agrees to pay the expenses incurred under Divisions (A) and (B) of this section in addition to the applicable limit of disability of this policy."

Under the decision cited, which seems to be exactly in point, it permit the charging of interest on the greater sum until all money has been paid into court or tendered by the insurance company, which is interest in this case on \$12,773.40.

The second point or question arises as to the payment of additional sums for medical and surgical expenses, under the provisions of the policy just cited, to wit, Section II(B) of the policy. The additional medical and surgical expenses are evidenced by the judgment entered in the Circuit Court, which is Exhibit 24, a certified copy of the record of *Holm vs. Sondenaa, et al.*, in the Circuit Court of the State of Oregon for the [158] County

of Multnomah. The question to settle is whether or not, as plaintiff contends, plaintiff in this case is entitled to this additional sum of \$708.45 in the judgment to be entered herein, or what part thereof plaintiff would be entitled to.

The third point to be determined at this time is the additional sum to be allowed to plaintiff as attorney's fees in the trial of this cause. I believe I am correct in stating that during the course of the trial it was agreed by counsel that if plaintiff should prevail and be entitled to attorneys' fees the amount of the attorneys' fees could be settled and determined by the Court. At the time of the trial it was agreed that such question had not been settled and should be settled, if plaintiff prevailed and was entitled to a judgment.

In passing, I merely call the Court's attention to the fact that plaintiff at the time was prepared to submit evidence of a reasonable attorneys' fee, and, upon agreement between counsel, dismissed such witnesses and no testimony was taken thereon.

The question of attorneys' fees, plaintiff submits, is provided by the Oregon Code Annotated, Section 101-134, and it is plaintiff's contention at this time it was merely a matter of the amount for the Court to determine.

Mr. Gearin: If the Court please, in connection with the form of judgment which has been submitted by the plaintiff, it is the position of the defendant that the judgment must only be [159] in the amount of \$10,000, the face value of the policy, together with the costs taxed in the lower court

in the cause entitled "Louise Holm vs. Sondenaar, et al.," Circuit Court No. 185-807, in the amount of \$64.95.

With regard to the claim for special damages in the amount of \$708.75, which amount was the amount of special damages awarded by the jury in the Circuit Court action entitled "Holm vs. Sondenaar, et al.," we submit the Exchange is not liable for that amount under Insuring Agreement I, Coverage A and Coverage B, and the amount which the Exchange is bound to pay, if at all, is \$10,000 plus costs in the lower court.

The provisions of Insuring Agreement II(B) are not applicable because it provides that the Exchange shall pay only "* * * any expense incurred by the insured, in the event of bodily injury, for such immediate medical and surgical relief to others as shall be imperative at the time of accident."

It is our position the Court cannot award special damages in an amount in excess of the face value of the policy, for to do so would be to extend the coverage not contemplated by any insuring agreement in the policy. That refers only to immediate and imperative surgical relief at the time of the accident, and refers to such items as emergency first aid and other expenses incurred by the insured, and does not refer to items of special damages.

With regard to the interest, the limits of the policy [160] are set forth and II, subsection (B), refers to the applicable limits of liability on the policy.

With regard to the question of attorneys' fees, it is our understanding that it was, at the time of trial, agreed between counsel that the matter would be taken care of after the determination of the liability. We are in accord with plaintiff's attorneys that the Court may determine reasonable attorneys' fees to be allowed in this action, without benefit of any testimony whatsoever.

Furthermore, your Honor, we have examined the cost bill which has been prepared by plaintiff and upon which service was accepted this morning, and we will have no objection to the items of cost set forth in the cost bill. [161]

REPORTER'S CERTIFICATE

I, Ira G. Holcomb, an Official Reporter of the above-entitled Court, duly appointed and qualified, do hereby certify that on June 16 and 17, 1950, and October 30, 1950, I reported in shorthand the proceedings in the above-entitled matter; that I thereafter caused my said shorthand notes to be reduced to typewriting under my direction, and that the foregoing transcript, consisted of pages numbered 1 to 161, both inclusive, constitutes a full, true and accurate transcript of said proceedings so taken by me in shorthand on said dates, as aforesaid, and of the whole thereof.

Dated this 22nd day of November, A.D. 1950.

/s/ IRA G. HOLCOMB,
Official Reporter.

[Endorsed]: Filed December 13, 1950.

CERTIFICATE OF CLERK

United States of America,
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Petition for Removal and Complaint, Bond on Removal, Notice of Filing Petition and Bond, Order extending time to file Answer, Answer, Demand for Jury Trial, Verdict for Plaintiff, Opinion of Court, Order denying Motion for Judgment notwithstanding Verdict, Judgment for Plaintiff, Notice of Appeal, Supersedeas Bond on Appeal, Statement of Points, Designation of contents of Record, Order to transmit original Exhibits, and Transcript of Docket Entries, constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 5251, Louise K. Holm, Plaintiff and Appellee, and Farmers Insurance Exchange, also known as Farmers Automobile Inter Exchange, Defendant and Appellant; that the said record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court.

I further certify that there is enclosed herewith duplicate transcript of proceedings dated June 16-17, and October 30, 1950, also instructions requested by defendant, also exhibits Nos. 3 to 28, inclusive.

I further certify that the cost of preparing the

within transcript and filing the notice of appeal, \$5.00, has been paid by the appellant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 20th day of December, 1950.

[Seal]

LOWELL MUNDORFF,

Clerk.

By /s/ L. BUCK,

Chief Deputy.

[Endorsed]: No. 12785. United States Court of Appeals for the Ninth Circuit. Farmers Insurance Exchange, also known as Farmers Automobile Inter Insurance Exchange, Appellant, vs. Louise K. Holm, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed December 22, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit
No. 12785

FARMERS INSURANCE EXCHANGE, Also
Known as FARMERS AUTOMOBILE
INTER INSURANCE EXCHANGE,
Appellant,

vs.

LOUISE K. HOLM,

Respondent.

APPELLANT'S STATEMENT OF POINTS
TO BE RELIED UPON ON APPEAL

Farmers Insurance Exchange, appellant above named, intends upon its appeal to rely upon the following points:

I.

The court erred in admitting in evidence testimony of witness Elmer Sondenaa of what A. von Borstel told him that Agent Lawrence had told von Borstel (Tr. 55).

II.

The court erred in admitting in evidence testimony of the witness Elmer Sondenaa as to the statements of adjuster Patterson (Tr. 62).

III.

The court erred in admitting in evidence testimony of witness Helen Sondenaa of what A. von Borstel told her that Agent Lawrence had told von Borstel (Tr. 82).

IV.

The court erred in overruling defendant's motion for an order directing a verdict against plaintiff (Tr. 142-149, and the order of the court entered thereon).

V.

The court erred in failing to submit to the jury the factual question of whether or not defendant's acceptance and retention of a premium paid on or about November 8, 1948, was made with full knowledge of all the facts (Tr. 149, 154-156).

VI.

The court erred in giving to the jury as a part of its instructions an erroneous version of the testimony given at the trial as to what was said between Agent Lawrence and the assured, von Borstel (Tr. 150, 153).

VII.

The court erred in failing to submit to the jury defendant's version of this conversation in addition to the version given by plaintiff (Tr. 150, 153).

VIII.

The court erred in failing to give defendant's requested instructions hereinafter quoted, each of which was prefaced by the following request:

“To the Court: The Court will understand that each subdivision of any instruction hereinafter requested is to be deemed a separate and complete instruction.”

IX.

The court erred in failing to give defendant's requested instruction IV B:

"You are not to consider any controversy between the defendant Exchange and A. von Borstel."

X.

The court erred in failing to give defendant's requested instruction IV D:

"Before there can be an estoppel in this case against the defendant, the plaintiff must first prove by a preponderance of the satisfactory evidence all of the following, which constitute elements of estoppel.

(1) Agent Lawrence must have been authorized to make the statements which are claimed by the plaintiff.

(2) Agent Lawrence must have made a false representation or concealment of material facts.

(3) Agent Lawrence must have made the representation or statements with actual or constructive knowledge of the true facts.

(4) The party to whom the statements were made, that is, the assured A. von Borstel must have been without knowledge or means of knowing the true facts.

(5) Agent Lawrence must have made the statements with the intention that the state-

ments be relied upon and the party to whom the statements were made, that is, the assured A. von Borstel must have relied upon the statements of agent Lawrence to his prejudice.”

XI.

The court erred in failing to give defendant’s requested instruction V:

“If you find from the evidence in this case that no representation was made by the defendant to Helen L. Sondenaa, then an essential element of estoppel would be lacking and your verdict would have to be for the defendant.”

XII.

The court erred in failing to give defendant’s requested instruction VII:

“A. There can be no estoppel where the conduct of the person asserting the estoppel is the result of such person’s faults or negligence.

“B. In other words, if the failure on the part of Helen L. Sondenaa to have the policy formally assigned to her was the result of her own fault or negligence rather than the statements made by agent Lawrence, then in that event you must find your verdict in favor of defendant.”

XIII.

The court erred in failing to give defendant’s requested instruction VIII.

“You are instructed that if under the circumstances of this case a reasonably prudent person would have made further inquiry as to the location and identity of an agent of the Exchange, and would have had the policy formally assigned within a reasonable period of time after the transfer of title, and you further find that Helen L. Sondenaa did not act as such reasonably prudent person would have acted, then in that event the plaintiff can not recover and your verdict would have to be in favor of the defendant.”

XIV.

The court erred in failing to give defendant's requested instruction IX:

“Before you can find that the Exchange was estopped to deny that the policy was transferred to Helen L. Sondenaa based upon the retention of the premium paid by A. von Borstel after the accident, there must appear from the satisfactory evidence that the Exchange knew of the transfer of title prior to the time the premiums were received.”

XV.

The court erred in failing to give defendant's requested instruction XI:

“A. The party setting up estoppel must have acted in reliance on the conduct or the representations of defendant. Helen L. Sondenaa must have had knowledge of the conduct

or representations and must not only have been destitute of knowledge of the validity of the assignment without the consent of the defendant endorsed upon the policy but must also have been without convenient or ready means of acquiring knowledge of the validity of the assignment without the company's consent endorsed upon the policy. (To the Court: See *American Bank v. Port Orford Cedar Products Co.*, 140 Ore. 138, 12 P. (2d) 1014).

“B. A party relying upon an estoppel must exercise reasonable diligence to acquire knowledge of the facts and if a party conducts himself with careless indifference to means of information reasonably at hand, the doctrine of estoppel can not be invoked.

“C. You are instructed in this connection that one of the provisions written on the face of the insurance policy required an endorsement of the consent of the defendant on the policy before the assignment of any interest under that policy would be valid.”

XVI.

The court erred in failing to give defendant's requested instruction XII:

“A. Under the terms of 7 O.C.L.A., Sections 101-1301 to 101-1316, inclusive, which sections regulate reciprocal insurance in the State of Oregon, there can be no contract of insurance until such time as the applicant for insurance has become a subscriber to the Exchange.

“B. You are instructed that under these circumstances Helen L. Sondenaa could not have become an insured of defendant Farmers Insurance Exchange until after she became a member of the defendant reciprocal exchange.

“C. Since Helen L. Sondenaa never became a member of the defendant’s Exchange, she was not the insured under this policy of insurance and defendant is therefore not liable for any judgment obtained against her husband.”

XVII.

The court erred in failing to give defendant’s requested instruction XIV:

“If you find that A. von Borstel misunderstood the statements of agent Lawrence, then in that event the plaintiff can not recover in this case.”

XVIII.

The court erred in overruling defendant’s motion for judgment non obstante verdicto. (See defendant’s motion and court’s order thereon, in record.)

KOERNER, YOUNG,
McCOLLOCH & DEZENDORF,
CLARENCE J. YOUNG,

/s/ WILLIAM D. CAMPBELL,
Attorneys for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 9, 1950.

[Title of Court of Appeals and Cause.]

STIPULATION

The parties to this cause by their respective attorneys do agree and stipulate that the exhibits admitted in evidence at the trial of this cause may be considered upon this appeal in their original form, without necessity for printing the same.

/s/ NATHAN WEINSTEIN,
Of Attorneys for Respondent.

/s/ WILLIAM D. CAMPBELL,
Of Attorneys for Appellant.

So Ordered:

/s/ WILLIAM DENMAN,
Chief Judge.

/s/ WM. E. ORR,

/s/ WALTER L. POPE,
United States Circuit Judges.

[Endorsed]: Filed February 16, 1951.